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**The Japanese Constitution**  
and  
**Politics**

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COMMEMORATING  
THE 2600TH ANNIVERSARY OF  
THE FOUNDATION  
OF  
THE JAPANESE EMPIRE



## PREFACE

As everyone knows, the Constitution of Japan is the great charter of the status of Imperial Japan as an independent important sovereign state entitled to assert and maintain its position among the civilized nations of the world; and it is also known that it is now over fifty years since our Constitution was promulgated in 1889. But no reliable work on that Constitution in English or in any other foreign language by a Japanese author has as yet appeared to give foreigners an exact knowledge of what constitutes our fundamental system of law, except "The Constitution of Japan" published by myself in 1930. That was the first treatise ever written in English by a Japanese scholar, in which the Japanese Constitution was treated of in its entirety.

During the ten years which have elapsed since that time Japan has made considerable advance and is not what she was ten years ago. Although she is now confronted with many difficult problems at home as well as abroad she is determined to maintain her position as the most important factor in the evolution which is rapidly transforming economic and political conditions in the Far East. She is at present recognized as a first-rate power, exercising a potent influence upon the destinies of all the nations of the world, and her actions in recent years have been attracting much attention on the part of the statesmen

and diplomats of foreign nations.

Indeed, foreign readers may certainly desire to know a great deal concerning the Japanese Constitution and Japan's present politics. It was in response to this demand that I undertook to revise the old edition of my book on the Japanese Constitution. But on consideration I have thought it better to publish a new book on the subject, with a view to commemorating the 2600th anniversary of the accession of Jimmu Tenno, the first Emperor of Japan.

In the preparation of the present book, my aim has been to present a logical and clear exposition of the Constitution of our country, explaining and expounding the general principles implicit therein, by way of making clear the national polity of Japan, and above all the nature and characteristics of our Tenno, the sovereign of the Japanese Empire. This being the main object of my present work it cannot and does not seek to cover the whole ground of the Constitution and does not go into any complicated details. There is indeed an ample field for further speculation and research, and reflection on many important matters will show that much remains to be done.

In writing this book I have made a comparative study of the constitutions of other nations, especially those of the United States and Great Britain, two countries with which Japan has had prolonged intercourse. I venture to hope that this treatise, primarily addressed to foreign statesmen and diplomats, may



assist in enabling them to become acquainted with an outline of the Constitution and politics of the land of the Rising Sun in the Orient, and that it may perhaps attain to a wider circle of readers among lawyers, scholars and students of constitutions. If a perusal of these pages will contribute to awaken an interest in the Constitution of Japan I shall be content and thankful.

At the end of the present book will be found a bibliography, showing the chief authorities I have consulted in the composition of this work, more than half of the number being new editions published subsequently to 1930. Here I must express my thanks to Dr. Thomas Baty of the Foreign Office of Japan who has given me valuable suggestions, and also to Prof. Mauf Katow who has kindly taken the trouble of reading through the proof-sheets and helped me in the preparation of the index.

N. MATSUNAMI.

Nihon University, Tokyo,

November 10, 1940,

the Celebration Day of the 2600th Anniversary of

Jimmu Tenno's Accession to the Throne.



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## INTRODUCTION

Before entering upon the principal part of the present work, we shall briefly dwell upon the geographical position of Japan, her physical features, and principal products, and also on her history, because they must be taken account of in order to estimate the real value of Japan and the proper character of Japanese institutions.

### POLITICAL GEOGRAPHY

Japan is situated in the east of the continent of Asia and west of the Northern Pacific lying between  $119^{\circ}18'$  and  $156^{\circ}30'$  E. longitude (the mandated Marshall Islands  $9^{\circ}0'$  N. lat. and  $171^{\circ}0'$  E. long.; the mandated Caroline Islands  $8^{\circ}0'$  N. lat. and  $150^{\circ}0'$  E. long.) though most of Japan proper lies south of 40 degrees N. lat. This places it on a level with the United States and China, and with the countries in Europe on the northern side of the Mediterranean.

The territory comprises within this limit six large islands, i.e. Honshu (the mainland), Shikoku, Kyushu, Hokkaido, Taiwan and southern Karafuto below  $50^{\circ}$  N. latitude; and the Peninsula of Chosen and more than four thousand smaller islands, most of which are very small, and only about six hundred are inhabited. Of these smaller islands, Tsushima, Iki, Sado, Awaji, Chishima, Ogasawara, Ryukyu, and Boko may deserve mention.

All these islands lying along the eastern fringe of

Eurasia, spreading for more than 3,800 kilometers on the Pacific, form a breakwater, as it were, for the continent against the Pacific waves.

At the time of the Meiji Restoration (1868) the four large islands mentioned above, Honshu, Shikoku, Kyushu and Hokkaido, all together formed Japan proper. Taiwan was acquired after the Japan-China war, and the southern half of Karafuto after the Japan-Russia war; Chosen was annexed in 1910, and the mandated Caroline, Mariana, and Marshall Islands were received by Japan at the Versailles Peace Conference, 1919.

Among many thousands of islands four are specially worth mentioning not only for their importance in themselves but also on account of certain great cities which are situated in them. It is necessary to know these great cities in order to understand the Japanese political history present and past.

1. Honshu is the mainland of Japan, in which are found Tokyo, Yokohama, Kyoto, Osaka, Kobe and other important cities such as Niigata, Nagoya, Kure and Yokosuka;
2. Kyushu is the second in importance, where most of the coal mines are situated, while it is also famous as being the early home of the Japanese. In Kyushu are found Nagasaki, Moji and Kagoshima;
3. Shikoku lies in the south, and is separated from Honshu by the famous Inland Sea;
4. Hokkaido, meaning the Land of the North, is



the second in extent. It has long been given over to the Ainu tribes (said to be the aboriginal people of Japan) and regarded as a colony than as an integral part of the motherland; but now as a matter of course it is part of the Empire as integral as any other. Hakodate and Otaru are in this island.

Japan as a whole is an island empire, with the exception of Chosen and Karafuto. Every part of the Empire is surrounded by water; to the east is the Pacific, and to the west of Chosen is the Yellow Sea and midway between Japan and the Continent lies the Japan Sea. Purely Japanese is the famous Inland Sea, enclosed by Honshu, Shikoku and Kyushu.

Japan has two ocean currents with important climatic effects; they have a favourable effect upon the fishery and marine product industries of the country. The one is Kuroshio, meaning black current (Japanese Stream) and the other Oyashio, meaning main current (Kurile Stream). The former is warm, originating to the north of the Philippines, and flows along the eastern side of Taiwan and Japan proper to a point  $55^{\circ}6'$  N. lat. where it bifurcates and takes a north-eastern course; the latter is cold, originating in the Arctic, it washes the eastern shores of Chishima and Hokkaido; both currents meet at Kinkazan, near Sendai. This insular position of Japan rendered her, in the past, almost immune from foreign invasions, while the efficiency of her armies has enabled her to be almost uniformly successful in her conflicts

with her foreign enemies. There are some points of similarity in this respect between Japan and Great Britain. At the same time, the very insular position of Japan has been one of the great causes why she would not and could not come into contact with Occidental civilization until recent times.

The coast-line is exceptionally long, being 52,231,757 kilometers for the whole empire, exclusive of the Kwantung leased territory and the mandated South Sea Islands. The coasts are extremely rich in fish, and are dotted with numerous fine harbours, Kobe, Yokohama, Osaka, Nagoya, Hakodate being among them. The realm covers 675,365 sq. kilometers, of which Japan proper is 332,545 sq. kilometers in extent, that is, more than 56% of the area of the whole empire: it is smaller than Sweden, but larger than England or Italy.

Geologically, Japan is a volcanic country, that is to say, the islands are eminently volcanic, the total number of volcanoes being 192, of which 58 are active. The country is very mountainous in Japan proper; there are 250 mountains with peaks higher than 2,000 meters above sea level, the highest being the sacred Mount Fuji which sublimely lifts its snowy head 3,773 meters above the beautiful Suruga Gulf (Mt. Niitaka in Taiwan is the highest in the Empire). As a rule the interior parts of the islands are traversed by mountains which are mostly volcanic in origin, and seven-eighths of the total area of the land consists of mountains and valleys; only one-eighth is taken

up by plains or flats. Low arable lands lie near the coast or in mountain valleys.

The Empire is abundantly watered by numerous rivers, usually wide where they empty into the sea, but comparatively short in course and not navigable for many miles inland except by flat-bottomed craft. But on account of the insular and complicated topography, they are rapid currents, and owing to frequent waterfalls they sufficiently suit the purpose of irrigation and supply hydraulic power. The river Shinano is the longest one in Japan proper: its length is 369 kms.

Japan is not, as some Occidentals think, a tropical country nor are the Japanese a tropical or semi-tropical nation. Most of her territories, lying between 30 degrees and 45 degrees north latitude, are not in the tropics. The temperature of the country varies considerably, as we go from north to south and also from east to west. In Hokkaido the mean annual temperature is 44 degrees F., in Tokyo 57 degrees; and at Taihoku in Taiwan 71 degrees. Thus 57 degrees being the mean temperature in Tokyo, our winter is cold and our summer hot, sometimes stiflingly hot, the heat owing its origin to the country's geographical position, as also to the Black Current which runs up from the south, while our cold winter is due to the Arctic Current from the north accompanied by the icy blasts of continental winds.

The best months of the year in Japan are April and November, the one noted for its cherry-blossoms,

and the other for its tinted maple leaves; consequently if foreigners wish to come to Japan, we hope that they will give us an opportunity of welcoming them in spring in the month of April. The hot months being July and August, the universities are closed in those months, and there is a long vacation.

There are seven Government universities in Japan, those of Tokyo, Kyoto, Osaka, Kyushu, Hokkaido, Nagoya and Tohoku, and besides many private universities, such as Nihon, Waseda, Keio.

In brief, these geographical and climatic features of the country stimulate its people to activity, while any failure to operate in accordance with the scheme of nature causes them misfortune.

Cherry-blossoms (*sakura*) have been celebrated in Japan from olden times. Among several species of cherry-trees the wild cherry-tree is the most important. This species grows in the regions from Kyushu in the south to Kinki (Kyoto, Osaka) in the mainland. The most famous place for cherry-trees of this species in wild growth is Yoshino near Nara. We compare our *samurai* (warrior) spirit to the *sakura* flower. The famous poem of Motoori, the noted scholar of old Japan is:

Should your Japanese spirit strangers seek to scan,  
Say—the cherry wild and fair scenting the morn's sun-lit  
air!

Japanese soil, although the area of the land is small, is productive, teeming with every variety of agricultural product. Among the trees may be noted the camphor-tree, paper mulberry, wax-tree, lacquer-tree, which latter furnishes the celebrated lacquer of

Japan. Rice, wheat, and other cereals are all cultivated. Copper, sulphur, lead, tin and rock crystal are produced.

In mineral resources, Japan is not rich compared with other countries. Though fairly well supplied with copper, sulphur and some other minerals, she has not rich gold deposits, and has a scanty natural supply of iron, the most important metals for modern industrial purposes. Japan has enough quantities of coal to feed her industries for the present, but her prospects in regard to the future output of coal are not so reassuring, the constant expansion of her manufacturing industry reducing her natural resources.

Japan's chief manufactures are silk, cotton textile goods, earthenware, porcelain, lacquered ware, matches, sugar, and camphor. Ship-building is one of her important industries.

The chief imports are raw cotton from India, U.S.A., Egypt and China; wheat from Canada, Australia and U.S.A.; wool from Australia; rubber from the Malays; lumber from U.S.A.; kerosene oil from U.S.A. and the Dutch Indies. The chief exports are silk, cotton fabrics, cotton yarns, tea, matches, camphor, earthenware, porcelain, lacquer-work and toys.

Japan is one of the most densely populated countries in the world, coming next only to Holland, Belgium and England. Her population has a remarkable density and a high rate of increase compared

with any other country's population and is quite remarkable in these respects. It has virtually trebled in the past 65 years, and the excess of the birth-rate over the death-rate is one of the highest in the world. The density of the population is such that Japan proper allows little room for its expansion, every sq. km. of the country containing 181 persons.

The fourth quinquennial national census, taken in October, 1935, has shown that the total population of the Empire is 97,697,555, Japan proper claiming 69,254,148, Chosen 22,899,038 and Taiwan 5,212,426. The average rate of annual increase during the five years from 1930 to 1935 inclusive was 14.47 per 100. On October 1, 1938, the population of Japan proper, as estimated by the Bureau of Statistics, was 72,222,700, including 36,182,700 males and 36,040,000 females. On the basis of estimates made from the 1935 census, it may reasonably be assumed that the population of Japan proper since that date has been increasing at an annual rate of approximately 1,000,000. The rate of increase by decades is as follows:

1870—1880	5 %
1880—1890	7.6 „
1890—1900	10 „
1900—1910	12 „
1910—1920	13 „
1920—1930	15 „

For the quinquennial period 1930–1935 the rate of increase fell off to 6.4%. The annual growth in population was highest in 1932 at 1,007,398, but since

then a gradual decline has been noted.

The total population of all the cities (127) of the country, as returned at the 1935 census, was 22,665,920. Of the 127 cities those with a population of 100,000 and upwards number 34. Tokyo heads the list with 5,875,667, followed by Osaka with 2,939,874. The populations of the so-called six big cities are shown below :

POPULATION		
	(1935)	(1938)
Japan proper	69,254,148	72,222,700
1. Tokyo	5,875,667	6,457,600
2. Osaka	2,989,874	3,321,200
3. Nagoya	1,082,816	1,224,100
4. Kyoto	1,080,593	1,159,800
5. Kobe	912,179	989,100
6. Yokohama	704,290	777,500

The staple article of the diet of the Japanese is rice with fish. In ancient times when the Japanese tribes lived on these islands, at least as early as 2000 B.C., in the latter part of the New Stone Age, they lived on natural food such as game, fish and vegetables. In the third century B.C. the Indo-Chinese brought rice to the islands and the natives learned to cultivate and eat it.

At present, rice being the principal agricultural product of Japan, the total yield of rice in recent years has been on an average something like 60,000,000 *kokus* per annum or nearly one *koku* for every in-

dividual of her inland population; a koku is equal to 4.97 bushels. The importance of rice to the life of the Japanese is equal to or exceeds that of all the other products of the country put together. Besides being used as food, rice is also made into an intoxicating beverage called saké. Saké is the national drink, and so large is its consumption and at the same time so heavy is the excise imposed upon it, that it has now become one of the greatest sources of revenue for the state, together with the income tax.

In recent years potatoes, both sweet and ordinary or Irish potatoes have largely increased in production, especially the sweet potatoes; but though they have improved in quality they are generally despised, being considered a food only fit for the poorer classes.

Fish is greatly relished; it plays an important part in the national diet, especially in cities and towns. The eating of flesh had been almost unknown in Japan for hundreds of years; the national custom and religious prejudice had prohibited the use of animal food except fish; even cattle were used solely as beasts of burden. But after the Meiji Restoration, all has changed, and the people began to take up the stock-breeding industry.

As regards the social and economic condition of the people the distance between rich and poor is not so great in Japan at present as it is in Europe and America and not so great as it used to be in Japan before the Restoration.



## POLITICAL HISTORY

In ancient times we had "the age of gods" preceding the age of the first Emperor, Jimmu Tenno. That prehistoric age has left to us strange tales of the gods and demi-gods, and we find much difficulty in explaining them very clearly.

The first human sovereign is Jimmu Tenno, who founded the Japanese Government in 660 B.C., that is to say 2600 years ago. He instituted religious ceremonies for venerating the memory of the Divine Ancestors, who became the objects of worship in the National Shintoism in later ages. His successors followed his example and prayed to the gods for the welfare of their beloved subjects. The government was a simple theocracy, in which ritual observances and the transaction of public affairs were of an identical nature.

The period of 1000 years from the accession of Jimmu Tenno may be called the age of tradition, as there is extant no authentic written history. In these early times the Imperial House was employed in subjugating the north-eastern region of Honshu and Kyushu, while the Empress Jingo invaded Chosen (Korea).

In 285 A.D. Confucianism with its important moral precepts concerning righteousness, loyalty, filial piety and fraternal love was introduced through the channel of the then more enlightened Korea. In 552 Buddhism was introduced with its teachings of cause

and effect; and through the encouragement of the Soga family and Prince Shotoku it spread both in the Court and among the masses. This caused a marked rise of Japanese fine art, notably of a religious character. In 607 A.D., when Prince Shotoku was regent, an ambassador was sent to China under the Sui Dynasty, and friendly official intercourse was opened later, when the Tang Dynasty replaced the Sui. Diplomatic relations were unbroken between the two nations and many a young man and monk went to China for study. The culture and civilization of the continent flowed into Japan and greatly influenced her politics and social life.

In 794 the capital of the empire was established at Kyoto and the Imperial Court continued in power. But many years afterwards the Court lost its power and there supervened the Shogunate regime in Japan.

The Shogunate regime began with Yoritomo Minamoto, who became Shogun (Generalissimo) for the first time in Japan, and hence the Kamakura Period (1185-1333) commenced, followed by the Muromachi Period (1338-1578), and the Yedo Period (1602-1867), which latter is also called the Tókugawa Shogunate Period.

During those Shogunate periods, the Minamoto, Ashikaga and Tokugawa families appeared successively as the heads of the government, holding all power, political and military in their hands, and the real sovereign power was held by the Shogunate, the Imperial Court in Kyoto having only a nominal

and theoretical importance.

A little after the Kamakura Period began Japan experienced the Mongolian Invasion. In 1206 the Yüan Dynasty gained an ascendancy over the greater part of China, and extended its territory even to a part of Europe. The Emperor Kublai Khan, having united the whole of China under his rule in 1279, sent an envoy to Japan recommending the latter under threat of war to become his tributary. But Tokimune Hojo, then in power at the Kamakura Shogunate, firmly rejected the proposal. The Yüan ruler sent a great armada to invade Japan. The Japanese were hard pressed, but they fought bravely with their small forces, and came out victorious by the help of a typhoon which destroyed the enemy's fleet.

A little before the Yedo Period began there arose the greatest hero that Japan has ever seen, Hideyoshi. He brought the whole country under his sway, built a great castle in Osaka and a magnificent mansion in Kyoto. He turned his attention to the ambitious project of subduing China, and in 1592 his invading army landed in Chosen. The expedition, however, was rendered abortive by his death.

During the regime of the Tokugawa Shogunate, Japan enjoyed on the whole a prosperity that lasted over two centuries and a half. But towards the end of this period, during which the Shogunate had adopted the policy of keeping the Imperial Court at a respectful distance, paying only apparent homage to it, Confucian scholars began to declare that the

first duty of the people was to be loyal to the Emperor and not to the Shogun, while the students of old Japanese literature pointed out the irrationality of the Shogunate regime in a country where the sovereignty belonged solely to the Imperial House. Shogun Yoshinobu Tokugawa found himself unable to settle many troubles which occurred at the time, and in October 1867 he surrendered the vicarious power of ruling the country, and thus ended the Tokugawa Shogunate, and with it the office of the Shogun itself went out of existence, and the Imperial Court recovered its full prerogatives which had been kept in abeyance for about seven centuries. This is the Meiji Restoration.

The Meiji Period saw the inception of Modern Japan, which begins with the year 1868, a year after Meiji Tenno (posthumous name) ascended the throne at the age of 16.

Before ascending the throne the Emperor took the famous oath of five articles before the ancestral gods, and these five articles provided for the foundation of the new regime. They were:

1. We will call councils and rule the nation according to public opinion;
2. Men of upper and lower classes without distinction shall be united in all enterprises;
3. Civil officials and military officers shall be in unison and all the common people shall be so treated that they can attain their aims and feel no discontent;

4. Old unworthy usages and customs shall be abolished and the people shall walk along the highway of heaven and earth;
5. Knowledge shall be sought among the nations of the world and the Empire shall be led up to the zenith of prosperity.

A new central government was established in accordance with these five principles, that is, the Meiji Government, and under this new government our institutions were reformed in many ways.

In 1869 the Imperial Court was removed from Kyoto to Tokyo. In February, 1877 the Kagoshima (General Saigo) rebellion started, and it was some seven months before the government was able to subdue the rebels. The suppression of this rebellion resulted in consolidating the basis of the Meiji Government and unifying the whole country.

The people demanded the creation of a Diet, and the Government responded to the people's demand, by sending Hirobumi Ito to Europe to make thorough investigations regarding Western institutions, to find out good systems and to procure as many suggestions as possible for instituting the Japanese Diet and Constitution.

Ito stayed mostly in Germany and there studied Western politics and constitutions, and came back in the following year. In 1884 the Government established an Investigation Bureau in a part of the Imperial Palace, and appointing Ito the president of the Bureau, ordering him to make a draft of the Constitution and plans for the new institu-

tions. In 1888 the draft was completed and the Emperor was present at all sessions of the committee on the Constitution, earnestly listening to the opinions of the different members, and took a great part in framing and discussing the resolutions.

By the way it may be mentioned that in 1879 occurred the visit of General Grant from the United States to Japan. When he was asked for advice upon Japan's constitutional problem he expressed the opinion that the grant of a constitution was inevitable and advised that while imitating the form of Occidental documents and agencies, Japanese statesmen should take care to preserve their own national precedents. In laying the foundations of the new political structure considerable importance was attached to this view by Ito.

On February 11, 1889, the 2549th anniversary of the accession of Jimmu Tenno, the first Emperor of Japan, Meiji Tenno reverently reported the promulgation of the Constitution to the ancestral gods and appeared in person before the Imperial Princes, Cabinet ministers, and other dignitaries, and solemnly promulgated the Imperial Constitution. The following year (1890) the Diet was first opened.

Soon after the year when the Diet was opened, Japan had to fight two foreign wars; the one was the Japan-China war (1894-95) and the other the Japan-Russia war (1904-05). It was a little before the latter war that Japan and Britain entered into an alliance. It is said that this dual compact on the whole worked with success. It strengthened the position of Japan in the Far East, while it enabled

Britain to concentrate her strength in Europe. In 1910 Chosen was annexed to Japan by the treaty of annexation.

On July 30, 1912, Meiji Tenno passed away, and with his death his memorable reign came to a close. His memory will forever be held in profound veneration by the people as one of the most illustrious sovereigns that have ever reigned over the country. His demise caused such profound grief among the people that an English correspondent was said to have telegraphed home "Japan is going into a decline with the death of the great Emperor" (cf. "A Political History of Japan during the Meiji Era, 1867-1914." By McLaren, 1916).

The great Emperor was succeeded by his son Taisho Tenno, and it was during the latter emperor's reign that the World War broke out (1914). Japan declared war against Germany and Austria-Hungary. She captured the German fortress at Tsingtao in the Far East, occupied the German possessions in the South Sea and despatched a fleet to the Mediterranean to assist the Allies in their naval activity. When hostilities came to a conclusion in November, 1918, Japan, by virtue of the Peace Treaty and League of Nations Convention was given a mandatory power over the German South Sea territories north of the equator. Then followed the Siberian expedition, the Washington Naval Conference, etc. (cf. "Japan under Taisho Tenno, 1912-1926." By Morgan Young, 1928).

Taisho Tenno passed away in December, 1926, and was succeeded by his son the Regent Crown Prince Hirohito, who ascended the throne as the 124th sovereign of the Empire. The year name "Showa" (Enlightened Peace) is given to his era.

The Manchurian Incident of September 18, 1931 led to the establishment of the independent state of Manchukuo, and the new Empire has cordial relations with Japan.

Japan is, at present, engaged in hostilities in China, which broke out in July, 1937, and these military operations have been carried out over wide areas in Northern, Central and South China.

In Japan the Cabinet, although not mentioned in the Constitution, is the centre of the administration. It is composed of 14 State ministers, the prime minister presiding. The other 13 ministers are those for Foreign Affairs and Home Affairs; of Finance, of Education, of Justice, of War, of the Navy, of Agriculture and Forestry, of Commerce and Industry, of Communications, and of Railways; for Oversea Affairs and of Welfare. The Department of Welfare was established in January, 1938.

Though all the ministers are separately responsible to the Emperor for all the administrative work under their respective jurisdictions, they are united by the Prime Minister, one of whose functions is to preserve unity among the State ministers. Through this specific function of the Premier which is prescribed in the Cabinet Organization Ordinance, and the rapid



growth of party government, his controlling power over the other State ministers has, of late, been greatly augmented; and as all matters of national importance are decided upon in cabinet meetings, State ministers are now, as a matter of fact, held jointly responsible to the Emperor.

Thus, each departmental minister has a twofold function, first as a State minister and secondly as a departmental executive head. As a State minister he is an adviser to the Emperor in the exercise of his sovereign power over national administration, and for the advice given assumes a joint responsibility with his colleagues, and as the head of a department his function is to direct, control and supervise all the administrative affairs within his departmental jurisdiction, for which his responsibility is individual.

Matters that should be presented to the Cabinet Council are prescribed as follows:

- 1 All legislative and budget bills;
- 2 Treaties and other international matters of importance;
- 3 Ordinances to be issued;
- 4 Disputes among the various Departments regarding jurisdiction;
- 5 Petitions from the people or from the Diet;
- 6 Outlays not prescribed in the budget;
- 7 Appointments and removal of officials of the "Chokunin" rank and also of prefectural governors.

Besides the 14 State ministers, there exists a

minister of the Imperial Household, who is not a State minister.

In the British Government under Mr. Nevill Chamberlain's First Administration there were 22 Cabinet Ministers and 7 Ministers not in the Cabinet.

Cabinet Ministers were

(1) Prime Minister and First Lord of the Treasury, (2) Lord President of Council, (3) Lord Chancellor, (4) Lord Privy Seal, (5) Chancellor of the Exchequer; Secretaries of State—(6) Home, (7) Foreign, (8) Colonies, (9) Dominions, (10) War, (11) India and Burma, (12) Air, (13) Scotland; (14) President of the Board of Trade, (15) President of the Board of Education, (16) First Lord of the Admiralty; Ministers—(17) of Health, (18) of Agriculture and Fisheries, (19) of Labour, (20) for the Coordination of Defence, (21) of Transport and (22) of the Duchy of Lancaster.

Ministers not in the Cabinet were

(1) First Commissioner of Works, (2) Post-Master General, (3) Minister of Pensions, (4) Attorney General, (5) Solicitor General, (6) Paymaster General and (7) Civil Lord of the Admiralty.

"Annual Register." A Review of Public Events at Home and Abroad for the year 1938, edited by M. Epstein, M. A., Ph. D. 1939, p. XI.

The British Government under Winston Churchill is undergoing changes in regard to its departments.

The American Constitution makes no provision for a cabinet. It exists only by custom and the will of

successive presidents. It is true that Congress makes provision for their salaries; but it requires presidential action to bring these heads of departments together around the council table and thus constitute a cabinet. Instead of asking for the opinion in writing the President calls a meeting of the heads of the executive departments twice a week. It was not until 1907 that the word appeared in a federal statute.

“American Government,” by W. Reed West, Professor of Political Science in the School of Government of the George Washington University (1939), p. 159.

There are ten departments as follows:

(1) Department of State, (2) The Treasury Department, (3) Department of War, (4) Department of Justice, (5) Post Office Department, (6) Department of the Navy, (7) Department of the Interior, (8) Department of Agriculture, (9) Department of Commerce and (10) Department of Labour.

See “Principles of Political Science,” by R. N. Gilchrist, 1938, Chapter XXVIII, “The Government of Japan,” p. 769.

## CHAPTER I

### THE ORIGIN OF THE JAPANESE CONSTITUTION

The constitution of Japan was framed and promulgated in 1889, but this is the written constitution, the unwritten constitution having existed from the beginning of the Empire more than two thousand six hundred years ago. This unwritten constitution is the oldest constitution in the world, the Empire itself being the oldest country existing in its original form. We cannot help being satisfied at this fact. We feel very proud of ourselves when we read the books written by the authors of the United States in which they say that they have the oldest existing written constitution in the world, and those of English authors in which they say that they have a very old existing unwritten constitution.

M. Mathews, an American professor says, "The constitution of the United States is the oldest existing written constitution of a sovereign state, having been in operation without fundamental change for almost a century and a half. Its roots go far into the past, the constitution did not spring full-grown from the mind of man. It was the product of experience and had its roots deep in the past, we can trace some of its provisions to Magna Carta, and to the Bill of Rights. In order to understand its formation, therefore, it is necessary to consider some of the events which preceded it. Such an inquiry might logically

lead us back into English constitutional history” (Mathews, pp. 3, 13).

Mr. Willis of the United States, being asked what is the truth as to the United States Constitution and its makers, replies that it is a constitution of English law and government and of colonial experience, with a new technique introduced by the Constitutional Convention, and with the whole transformed by the Supreme Court. (Willis, p. 1)

It is the same with the Japanese constitution. In order to understand well the grand principles embodied in the written constitution of Japan, it is necessary to know Japanese history and know how the Empire came into being and has developed under the good government of the Emperors. Without this knowledge one cannot understand the true meaning of the Japanese Constitution. Some of our constitutional lawyers have neglected this study and fallen into error and have had mistaken ideas regarding the sovereignty of the state and the status of our Emperor. They imported without discrimination the so-called organism theory from Europe, especially from Germany, and tried to explain thereby the status of the Emperor of Japan. It is a great mistake; the organism theory may apply to Germany and other western states, but not to Japan. It may be well for westerners to use that theory for the explanation of their own constitutions; it is a mistake to apply it to the Japanese constitution. This error is due to the ignorance of these scholars regarding Japanese history, especially as to the characteristics of the

Empire and its Sovereign.

Therefore foreigners who would fully understand the grand principles embodied in the written constitution of Japan must investigate the unwritten constitution which comes down from early times to the present time, and besides that they should study Japanese history, at least in its political and social aspects.

Our unwritten constitution is older than that of Great Britain. We do not say that the English constitution began with Magna Carta. We know that Magna Carta is a document of past law. It was not the intention of English barons in drawing up the charter to make new law; the special points they had in view were to put old laws in writing and the King was pledged to observe them in the most binding form which they could use, the form of a legal grant or conveyance. Thus Magna Carta is an epoch-making element in the English Constitution by which one epoch ceases and another begins, and by which the absolute, irresponsible monarchy of the earlier periods comes to an end and limited monarchy begins to form. The unwritten constitution of England is thus older than Magna Carta, but its beginning has no certain date, as it grew from time to time until it was written down in Magna Carta; it did not spring up full-grown.

Contrary to that, the Japanese unwritten constitution sprang up full-grown; it was made by the Emperor's ancestor Amaterasu-Omikami, more than three thousand years ago. We believe so, and our

people have a firm conviction thereof, right or wrong.

The English Constitution, like the English nation, was derived from a variety of sources. The territory which came in time to form the Kingdom of England was occupied during the first thousand years of its known history by a succession of peoples who ruled it in turn and who might each be expected to leave behind a permanent legacy of law and institutions to later times. Such being the case, the exact time when the English constitution sprang up is unknown, and it is impossible to ascertain it. But in Japan, where the territory has been occupied by one people throughout all periods from the beginning of the country up to the present, it is easier to ascertain the time when its unwritten constitution first began.

So much for our unwritten constitution; but the history of our written constitution is new, short of being called history; we shall treat its short history in the chapter on the codification of the Japanese constitution.

We have what is called Prince Shotoku's "Constitution in Seventeen Articles" which was promulgated in 604 A.D. and the standard text of which is found in the *Nihongi* or *Chronicles of Japan* (*Proceedings of the Imperial Academy*, February, 1936, p. 31. "Has there ever been handed down a Holograph Copy of Prince Shotoku's Constitution in Seventeen Articles?" by Dr. Anesaki); it is not a constitution in the modern legal sense of the word; instead it is said to be rather a group of moral maxims.

Mr. Andrew observes in his "Twelve Leading Constitutions with their Historical Background" (Milton H.

Andrew, M.A. 1931, p. 179) as follows:

"The first Japanese Constitution dates with the year of 604 A.D. when Prince Shotoku issued the country's first written code of laws in seventeen articles. This early document is little more than a group of moral maxims." He goes on to say, "But in it we find the principle of executive supremacy of the emperor and the demand for popular obedience. . . . Buddhist doctrines were incorporated in nearly all the constitutional provisions. This constitution, if we may call it such, was not replaced by any other until 1889."

In contrast with that the written constitution of the United States has its long history. Thirteen American colonies declared, on July 4th, 1776, their independence of Great Britain and gained the recognition of that independence by the treaty concluded in 1782. Previous to this, the colonies terming themselves States had acted through certain common political organs such as the first and second Congresses and had made provision for their government by adopting written constitutions. In 1771, they took the further step of grouping themselves into a Confederation under an agreement known as "Articles of Confederation." These articles made provisions for common action in a number of important respects and provided a single representative body termed a Congress through which common action could be taken. By the Articles of this instrument the Confederacy was styled "the United States of America."

A call then was issued from the Congress of the Confederation for the assembling of a convention and



this convention which has subsequently been known as the Constitutional Convention completed its labours on September 17, 1787, when the engrossed Constitution was read and signed.

According to Mr. Willis there have been six distinct periods in the history of the written constitution of the United States, and in these different periods there have been developed even great outstanding doctrines, and these doctrines constitute the present Constitution of the United States. He remarks that the first constitutional period was the period of the Constitutional Convention, and in this period there was made what is usually called the American Constitution, but which is only the original part of the American Constitution. In this Convention only two great doctrines, which are characteristic, were worked out; they were the separation of power into legislative, executive, and judicial branches, and the amendability of the constitution, etc.

We have no such long history as that of the American Constitution in our written constitution making. In a word, the origin of our unwritten constitution is the oldest in the world, while the written constitution is comparatively new, having only a short history of some sixty or seventy years.

## CHAPTER II

### THE UNWRITTEN CONSTITUTION OF JAPAN

Constitutions may be classified into written and unwritten. Although it is not necessary to put them in writing, constitutions in most modern nations are reduced to definite forms of written statements; and in order that, thus stated, they may have an additional binding force, they are usually drafted and adopted in some specially formal and solemn manner, and in most cases, special provision is made as to the manner in which they may be revised or additions made to them.

At present nearly all nations have found it necessary to state formally and categorically in writing how the community is to be governed and in whom the powers of government shall reside. This is because the nation wishes to make clear on whom the state sovereignty shall rest and what their rights shall be; and that is one reason why many written constitutions follow a revolution, during which some of the governed have overthrown their governors and set up new governors—themselves usually—in their place. The American written constitution is an illustration of this, and the French constitution is another. We may mention many more such illustrations among new constitutions, such as the German constitution or the Russian constitutions.

The principal states of the world have adopted con-

stitutions in this form of definite and comprehensive enactments during the last one hundred and sixty years. They all have written constitutions. Not only independent nations, but such peoples as of British dominions, colonies, protectorates and mandated territories; and American territories, and the Philippine Islands, an American possession, have their written constitutions. In Japan too we have a written constitution, and we think that it is far better to have a written constitution than not. Mr. Friedrich states that "one would maintain that the constitution must be written in order to be a constitution, that it must be embodied in a document. Superficial though this view may seem to us to-day, it was widely held during the age of constitution makers in the past century and a half." In spite of the above statement, we still think that it is far better to have a written constitution than not to have it. The constitution should be embodied in a document. This view is not superficial to-day; nor was it so during early days, for it has a reasonable ground. Anyhow, as a matter of fact almost all of the new constitutions are written down; if that view were superficial, why do so many progressive peoples write their constitutions down to adjust them to the changing conditions of society?

The usefulness of written constitutions is the same in the case of a monarchy as in that of an aristocratic or democratic nation; it is the same in Japan as in the United States. What Willis says about a democratic people is, in this point, exactly true with regard

to us. He says, "An ideal constitution for a people in which resides all sovereign power would be a written document setting up a framework of government, and setting forth such limitations on the powers of those agencies as the people think should be prescribed for their own protection and for the better operation of the government which they are establishing." (Willis, p. 3)

We do not know why the author limits the usefulness of the written constitution to a nation in which all sovereign power resides in the people. The usefulness of the written constitution is the same in a monarchy as in an oligarchy or in a democracy. In Great Britain the nobles forced their King to sign a written document, Magna Carta; in the United States an aristocratic constitution was framed by men of property and in the Soviet Union a written constitution was framed and signed by the delegates of all classes. Japan is a monarchy, but we think that we should have a written constitution.

Some countries have no written constitution, and they are known as the countries of unwritten constitution, but they are very rare; among the modern great nations Great Britain alone is a state without any formal written instrument of government. Although in that country the effort at a written document was once made during the Interregnum, it perished without leaving any substantial trace: there has since been no written constitution in England and any precise definition of it is absent. Mr. Keith says that this

absence of precise definition is in complete accord with the essential fact of the sovereignty of parliament, and that the flexibility thus induced has permitted the remarkable evolutions seen in the growth of responsible government (Keith, p. 28). He says further, "Added to the difficulty of stating definitely the precise rules of constitutional law as applied to the United Kingdom, we want to lessen the difficulty of stating the rules of constitution as much as possible."

In the same way Sir W. Anson appreciates the unwritten form of the English Constitution and says: "The possibility of revolutionary change without formal revision rests essentially on the fact that the whole system of responsible government rests on convention. It is thus practicable to adjust the operation of the constitution to the changes brought about by the development of political conditions without legal change or serious difficulty." Indeed, English law makes considerable use of the concept of a constitution without having a written document to argue from; and Englishmen are proud of their unwritten constitution. Even of Magna Carta, the great charter of world-wide fame written down in a document, they ascribe the importance to the unwritten principles therein embodied. They say that the importance of the Great Charter is to be found, not in the specific provisions which it embodied, but in the principle upon which it was based, and that as this fundamental principle was not stated in explicit form in the Charter, it was consequently left in a shape to be

easily expanded into a general principle applicable to all the changing phases of national development.

Mr. Jenning inveighs against the written constitutions of other nations and praises English unwritten constitution as follows:

"In these days constitutions come like water; and even if they do not go like wind, strange things happen to be which were not contemplated by their framers. Economic disorder and social unrest warp the development of political institutions where they do not destroy them. Nor does a written constitution tend to obscure the fundamental changes which are taking place and constitutional lawyers explain a political system which exists on paper and not in practice. No British public lawyers fear such a danger."

Great Britain might go on well without a written constitution, but this is not necessarily so with other nations. An American writer ascribes the fact that Great Britain has no written constitution to an historical accident peculiar to England, and says that other nations having no such accident, are not apt to have unwritten constitution as Great Britain, adding that the United States of America has its good written constitution.

A nation such as Japan which has been progressing under the Emperor for more than two thousand years may perhaps go without a written constitution; in this point we are different from nations which have no history like ours; still we find it better to have our constitution written down in a document. The Imperial Oath is to this effect when it says, "We deem

it expedient, in order to give clearness and distinctness to the instructions bequeathed to establish fundamental laws formulated into express provisions of law."

Thus we have classified constitutions into written and unwritten, and as the example of the former have shown the constitutions of Japan and the United States, and as that of the latter the English constitution. This classification however is not absolute and not satisfactory; no state is satisfied with one class or other alone. In practice any particular constitution is likely to partake of the nature of the two kinds. On the one hand there are many written constitutional documents in the state which is said to be the state of unwritten constitution; for example, Great Britain, which is said to stand alone without written instruments of government, has many important written documents such as Magna Carta, Petition of Right, Bill of Rights, Habeas Corpus Act which may be said to be written constitutional documents wherein is embodied a definite body of constitutional rules and practices. Besides those important statutes, many statutes are enacted now and then, which are properly regarded as a part of constitutional law.

On the other hand, the states of written constitution have many unwritten constitutional provisions. The adoption of written constitution does not prevent the existence and development of bodies of unwritten constitutional law; for, however comprehensive these fundamental documents may be, there inevitably

grows up a body of unwritten constitutional practices as fixed and obligatory as those provided for in the written instrument. For instance, the constitution of the United States is not all contained within the words of the document adopted in 1787, nor even within that document and the twenty-one amendments subsequently adopted; but it consists of these documents and certain well-established customs and principles.

An American writer says: "Even in the United States which was the pioneer in adopting written constitutions, there remain principles partly unwritten. The written document, ordinarily spoken of as the constitution, is really only the core of the constitution. In order to get a view of the constitution in the broad sense, we must consider not only the written document, but also customs and usages which modify it, statutes which elaborate the structure of the government, and decisions of the court which interpret and apply provisions of the written constitution." (Mathews, p. 7)

This remark applies in the main to the Constitution of Japan. In Japan the written constitution is the core of the constitution in a broad sense. It is the original trunk to which new branches are attached. Our constitution may be stated to be made up of the written document, and legislative interpretations, usages and amplifications by executive interpretation and usages as in the case of the American Constitution. But we cannot say in Japan that our written



constitution can be modified by customs, usages, interpretations and other matters; because, in Japan the modification of the written constitution needs a certain process provided for by the constitution itself. In Japan again the judicial interpretation of the constitution has less influence than in the United States; the power of the Supreme Court of Japan over the interpretation of the Constitution is different from that of the Supreme Court of the United States; what the American writer says of the American constitution does not apply to Japan. He says that its (the constitution's) amendments contain but a small part of constitutional law, and one could memorize it word for word, and know practically nothing of its implications (Gerstenberg, p. 1).

In the written constitution of Japan there are far fewer rules than in the American Constitution and one could really with ease memorize it word for word; but this constitution implies a good deal of constitutional rules and principles; and by reading it one can know a great deal of its implications without the help of interpretations and usages.

Another American (Mr. Mathews) says of the American Constitution that in the course of time a written constitution naturally overgrows with political customs, which may even go so far as practically to nullify certain provisions of the written document. This may be true in theory also of the Constitutions of all nations; but it does not apply to the Japanese Constitution in the same way as to the American

Constitution. In the United States the written constitution has been overgrown with political customs, and many of its provisions are nullified as that author says; for instance there they inserted the prohibition rule in the Constitution as the Eighteenth Amendment in 1919, and soon after issued the Twenty-first Amendment to nullify the prohibition rule in 1933. We do not find such a change in our constitution, nay there has been no single change in our written document since its promulgation in 1889.

With these qualifications the Japanese Constitution is the same with the American Constitution, and the Japanese Constitution in the broad sense contains legislative, executive and judicial interpretations and usages as well as the provisions of the written document. The written provisions of the constitution are not in themselves enough to embody all the principles of the Japanese constitution.

Every written constitution is accompanied by an unwritten constitution. In every system practical devices of government exist to supplement, to interpret, and usually to transform the foundations of the polity as laid down in the written record. It is as true with most other countries as with Great Britain, that the conventions and usages which govern the exercise of political power are more significant than the law of the constitution (Clotie's "The Origin and Nature of Constitutional Government," 1936).

## CHAPTER III

### THE CODIFICATION OF THE JAPANESE CONSTITUTION

The codification of the constitution means the determination or making of the constitution on the one hand, and the art of drafting the articles, sections and subsections on the other; sometimes it means both combined. In the former sense the codification of the Japanese constitution was made by the Emperor Himself who determined and granted the written constitution to His subjects, we say that His Imperial Majesty determined a constitution and has made it fundamental law; but in the latter sense it was made by three young formulators under Count Ito as their chief, and the many officials who discussed the draft. They met in a room in the Imperial Palace and discussed the principles to be adopted and the wording of the rules, almost always in the presence of His Imperial Majesty, Ito as the chief draftsman taking the chair.

Ito's draft of the constitution is said to be rather after the German system than any other, and some persons think that Ito studied German institutions only, and compiled his draft on the German model, but they are mistaken. Ito was sent to the United States also to study the federal constitution and subsequently to England to study the constitution there.

He examined the political genius of democratic

government as revealed in the American constitution and in the English constitution. But he thought them unsuitable to the Japanese Empire, and consequently he adopted the German system which he thought better adapted to the Empire; he thought that what he has himself called constitutional imperialism is a strong national government under the cloak of constitutional forms. Therefore, Ito who visited Germany in 1882 on his return to Japan in 1884 began to make the draft of the constitution on the German system.

In the framing of the constitution the draftsmen were young, all but Ito being under forty years of age, and the majority of the members of the constitutional conference who discussed the draft were between forty and fifty. We know that the case was somewhat different in the framing of the constitution of the United States.

The average age of the framers of the American Constitution of 1787 was forty-four. Among them, four were in their twenties (Jonathan Dayton 26, Francis Marcer 28, Charles Pinckney 29, Dobbs Spoit 29). Alexander Hamilton was 30, George Washington being 55; Benjamin Franklin 81, was the eldest of all.

Mr. Irving Brant says on this point: "Our constitution is interpreted by the Supreme Court justices whose average age is more than seventy years. It was written by men whose average age was forty-four. Four of the framers were in their twenties,

fifteen in their thirties, twenty in their forties, eight in their fifties, five in their sixties and one being eighty-one, whose presence raised the average one year. How can we know these young men, in their laces and knee-breeches in study or in Philadelphia society?"

In debating on the draft of the Japanese Constitution, all those who took part were state ministers and privy councillors; no merchant, no engineer, no lawyer, was in the constitutional meeting, neither any university professor nor judges of the court; the constitution making was bureaucratic.

In contrast with the bureaucratic character of the constitution making in Japan that of the United States was of an aristocratic nature; nearly all the fifty-five members were men of distinction in their respective states—governors, judges, lawyers, university professors, slave traders, merchants or financiers. About half of them were college graduates of American, English or Scotch Colleges. All belonged to the so-called upper class of society, not a worker or small farmer being among them.

As a consequence of this aristocratic nature of the constitutional meeting it is said that the delegates seemed more interested in property rights than human rights and no such thing as a guarantee of personal protection was included in the finished document.

Therefore severe criticisms came down upon it; when the constitution was made known to the people they found something quite different from the Articles

of Confederation, and found also that the new constitution did not enumerate the rights of the people under the new form of government. On realizing this many opposed the constitution and said that it was a device to rob the people of their power. What is in it, they asked, to safeguard their liberties? They thought that the Constitution should expressly state the rights of the people living under it.

In an American book it is stated as follows: "The fifty-five delegates assembled. All the states except independent little Rhode Island sent delegates. They were for the most part prominent men of the well-to-do classes—property owners, merchants, planters and bankers; thirty four of them were lawyers, or men who had at least studied the law. The small farmers and the labouring class were not represented."

We see that just the opposite was the case with the Constitutional Congress of the Soviet Union where the great majority of the delegates present were farmers and workmen.

Therefore the American republic thus made up is said to be an aristocratic republic instead of a democratic republic, and the new plan of government was opposed by the mass of farmers and working people.

It is otherwise in Japan. Although all the framers of the constitution were, as explained above, government officials, no merchant, no farmer, no professor, no lawyer, no judge taking part in the constitution framing, the present constitution as made up respects and protects the security of the rights and the pro-

perty of the people, and secures to them the complete enjoyment of the same; no one complains of the contents of the constitution, and no amendment was proposed.

It may seem strange that the people of Japan are satisfied with their constitution framed bureaucratically by government officials, while the American people were not satisfied with their aristocratic constitution, but it is not really strange. This difference flows from the difference in the nature of the two constitutions and the difference in the nature of the two nations, that is, the monarchical nature of Japan and the democratic nature of the United States.

In contrast with these two constitutions the present constitution of the Soviet Union, the Constitution of 1937, is quite democratic. In order to draft the present constitution, a commission of thirty-one of the country's oldest economists, historians and political scientists was appointed.

Besides such a difference in respect of the framers of the written constitution, there is a difference regarding the publicity of deliberations of the constitutional conference. The question whether the process of constitution making and the draft of the constitution should be made public, and the discussion meetings open to the public, was decided in different ways by different nations. In Japan both draft and the discussion meetings were kept secret and this secrecy was strictly observed; the people did not know a single article of the constitution, until it was public-

ly promulgated on 11th of February, 1889. Some believe that this secrecy is in accordance with the monarchical principle of the constitution, and state that even the framing of the constitution of the United States was made in absolute secrecy, why not therefore in monarchical Japan?

At that time there was a paramount question as to whether the state should ask the representatives of the whole country to participate through the establishment of a constitutional convention or whether the creation should come merely by order of the sovereign. Ito took the latter view supported by many conservatives, and made the framing of the new constitution the work of the Privy Council of the Emperor and let the members of the Council discuss the constitutional documents. Ito resigned the premiership and assumed the presidency of the Privy Council.

In May, 1888, the Privy Council commenced to deliberate upon the constitution in a chamber of the Imperial Palace in the presence of the Emperor and finished their work towards the end of the year and made it public the next year ("The Problem of the Far East," by Sobei Mogi and H. Vere Redman 1935, p. 48).

In the United States the draft was also kept in strict secrecy, until it was promulgated in public. This is because it was thought best to present the completed plan of the constitution to the people, and it was decided to conduct the sessions of the convention behind closed doors; and every delegate was pledged not to disclose any information concerning the discussions.



It is only through Madison's report published after his death, that the American people were enabled to go behind the scenes of the convention and see the perplexities, the weakness and the wisdom of the fifty-five men who met to solve the problems confronting the nation.

The number of the delegates who signed the constitution was forty-two, as some of the delegates disappointed and angry had gone home before the close of the convention, and three of them reluctantly signed.

The reason why the draft of the constitution was discussed in Japan in secret is similar to that which operated in the case of the United States.

On the contrary, the Soviet Union, when the draft was completed, published it for discussion, its copies were issued in an edition of sixty millions. Discussions were held in every farm, factory, school, and workers' club, and the number of suggested amendments totalled 154,000. The number of delegates who attended the All-Union Congress to discuss the draft of the new constitution was 2,016 instead of fifty-five as in the case of the United States and some thirty in that of Japan. Classed by occupation, the largest single group in the Congress consisted of workers directly engaged in production: 317 from industry and transport and 99 from state farms and tractor stations. This is in great contrast with those who took part in the discussion of the constitution draft in Japan and the United States: in the former, government officials, and in the latter, men of property only discussed the draft.

At the time of the open discussion of the constitutional draft Stahlin sat as the chairman on a high platform and behind him sat the thirty members of the presidium just elected, and before him was an ocean of faces. On the main floor the delegates, above them a great gallery of visitors, diplomats from many nations sat in the boxes. From the press gallery the representatives of the world's news services rushed out with half-hourly telegrams to keep a going the afternoon editions in the capitals of their respective countries. Besides that throughout the Soviet Union and far beyond its borders, tens of millions of people listened by radio to the discussion. Great mass-meetings in England, France, Germany, the United States, etc. heard it.

This is why Stahlin claims the new constitution to be "the most thoroughgoing democratic constitution in the world."

It is true that this constitution is the most democratic in the world. It was framed after discussions by all delegates from every state representing almost all classes of the people who lived within the Soviet Union.

When Stahlin reported the draft of the new constitution of the U.S.S.R. (November 25, 1936) to the Constitutional Congress, he declared that "the new Soviet Constitution is the only consistently democratic constitution in the World." This is the self-eulogy of the constitutional maker in Russia; and when the draft after forty-three amendments was passed by the open Congress Meeting with cheers the 2,016 delegates sang three stanzas of the "International."

Eulogies on the draft of the new constitution from the democratic side of the world are as follows:

Russian blacksmith delegate—Our constitution is written with golden letters in the history of mankind.

French Minister of Aviation—The fullest application of

democratic principles.

British Labour Party's Parliamentary Leader—The most outstanding feature is the guarantee of the right to work. No other country is in a position to do this.

Chinese woman leader, Mrs. Sun Yat-sen—Mankind's greatest achievement.

A Madrid journalist writing from the dark night of Madrid hailed the Constitutional Congress and saluted it with the recommendation, "The world's beacon light."

Romain Rolland telephoned from Geneva to radio news agencies that this is the establishment of real democracy, one which is possible in a classless society, and that this is giving life to the great slogans which still now were but dreams of mankind—liberty, equality, fraternity.

We may add to these eulogies one more, that is the comment of Norman Angell who says that it may be the fate of Russia not only to prove to the world that socialism can be made to work, but actually to save political democracy for mankind as well.

In the fascist lands there was a general silence or a sneer, the official Nazi press said that the new constitution of the Soviet Union is an empty promise, and other German papers cried that it is a new comintern dodge. In Japan almost no comment was made.

But we are afraid that the Soviet people who have such a democratically made constitution can not be more happy than the American people who have a less democratically made constitution.

As Japan is a monarchy, we have, strictly speaking, nothing to compare with the Soviet Union, as regards constitution making. In the framing of the Japanese written constitution no voice of the people was heard,

all being kept secret and totally closed to the people. But as our constitution is full of beneficent rules we look upon it with respect and gratitude. No adverse criticism appears, no proposal for its amendment is raised. This is due to the nature of our constitution and also to the nature of Japanese nationality.

Ito, writing in the preface to the commentary on the Japanese Constitution says: "The constitution of the Empire of Japan is a collection of the fundamental rules of the State, and lays down clear definitions of the relations that ought to exist between the Sovereign and His people. These two laws (the Constitution and the Imperial House Law) are precise and definite in their meanings; they may be compared even, for brilliancy, to the heavenly luminaries. They are couched in language whose import is deep and comprehensive; indeed there is no word adequate to express the praise due to them."

Although this is the self-eulogy of the statesman on the constitution of which he was the chief draftsman, yet the majority of the people accept this comment and the present writer is one of them. I think that the Japanese Constitution best suits the Japanese Empire; it is really a good Constitution, therefore no criticisms were made against it.

Upon the American Constitution unfavourable comments were made: (1) it is a triple-headed monster, and is as deep and wicked a conspiracy as ever was invented in the darkest ages against the liberty of a free people, (2) the Constitutional convention was

not to be trusted; four months it had sat behind closed doors as the members were afraid to let the people know what they were about; what confidence could be placed in such men? (3) with regard to the framers' personality it was insinuated that Hamilton and Madison were mere boys, Franklin was in his dotage, and as for Washington, he might be a good soldier, but what did he know about politics?

From September 1787 to July 1788, the bitter fight raged all over the country between those who were for the Constitution and those who were against it, and as time went on the opposition became more fierce and one realized the danger that the constitution might be rejected. But happily by June 1788, the necessary nine states had ratified it on the understanding that a Bill of Rights should be added to it as soon as the new government was put into operation. The first ten amendments were therefore adopted by Congress in 1791 and are now regarded as part of the original document.

The American Constitution thus framed being that of an aristocratic republic is midway between aristocracy and democracy.

The early Puritan leaders did not believe in democracy. Governor Winthrop then wrote, "Democracy is amongst civilized nations accounted the meanest and worst of all forms of government." They thought that in any group of people the best part is always least and that those people should be the governing group. Samuel Adams, one of the framers of the American Constitution is in favour

of democracy and says: "Democracy is an ideal of human relationship. When the inalienable rights of each individual man are recognized, when the state is governed to conserve those rights, when rich and poor, high and low, can look upon each other as brothers and not antagonists, then kings and armies shall pass from the face of the earth." Such a state of democracy is only Utopian, and even if it were realized in the world Japan must have her Emperor, and without him our people could not have peace and happiness.

## CHAPTER IV

### THE PROMULGATION OF THE JAPANESE CONSTITUTION

The Constitution of Japan was promulgated on February 11, 1889. We have given here the date in European style; but our way of dating is different.

We begin our new era giving it a special name on the accession of a new Emperor to the throne, so that we may know very easily what year a certain year corresponds in the reign of the present or past Emperor (Imperial House Law, Art. 12). Again we do not give each month of the year a special name such as January, February, March, etc., but call them in the numerical order in which they occur, beginning with the first month and ending with the twelfth month. Thus the date on which our Constitution came into being was in our fashion the 11th day of the 2nd month of the 22nd year of Meiji (Meiji means Enlightened Rule). To-day when I am writing this book is the 8th day of the seventh month of the 15th year of Showa, Showa being the name given to the present era to commemorate the accession of the present emperor to the throne.

I do not know whether this method of counting the years and the months is convenient or not, nor do I know how foreigners look upon this system; but we have had the system for a long time.

Besides this we have our national era, a historical era, which opened with the accession of the first

emperor; if we may specify the present year in this historical era, the present year is the 2600th, as the accession of the first emperor known Jimmu Tenno took place 660 B.C. when Japan emerged upon the scene as a nucleus of conquering tribes under the leadership of the August Emperor, who has been given a posthumous name Jimmu, the Ruler of Divine Valour.

The national era is, however, neither in common nor much in official use; it is sometimes used by classical writers. This by no means signifies that we disregard the great epoch in which the authentic history of Japan has been developing itself. The reason why we do not use the national era is because to do so requires many words to express it.

We call the anniversary of the accession of the first emperor "Kigensetsu" and look upon it with great regard and respect. According to the Imperial Ordinances relating to festivals, there are four great festivals and eight small ones; and amongst them the festival of the anniversary of the accession of the first emperor 2600 years ago is the greatest in the year, just as the fourth of July is for the people of the United States.

On that day ceremonies are performed at the Imperial Shrine, and a great banquet is given in the Palace to the Princes of the Blood, foreign representatives, high officials and nobles. Many important events of the state have taken place on that day, the promulgation of the Constitution being the



best example.

Our Constitution was promulgated on the day of the 2549th anniversary of the accession of the first emperor. Some foreign writers have fallen into an error when they say that the 11th of February is a national holiday in Japan in commemoration of the promulgation of the constitution. On the contrary, the constitution was promulgated on that day because of the greatness of the day, the day being the day of the accession of the first emperor to the throne of the Japanese Empire.

Sometimes we use the historical or national era instead of or in conjunction with a new era, especially in the case of treaty, e.g. the ratification of the treaty for the renunciation of war is dated "Emperor Jimmu's historical era 2598th, the new era 4th year, 6th month, 27th day" while the notification thereof is dated "Showa era 4th year, 7th month, 25th day."

The Constitution of Japan was promulgated by the Emperor Meiji in the palace. On that occasion His Majesty took an oath before the Imperial Ancestors at the Sanctuary of the palace, to observe the provisions of the fundamental law. As this oath shows and explains very well the nature and characteristics of our Constitution, I will quote it in full.

#### IMPERIAL OATH AT THE SANCTUARY OF THE IMPERIAL PALACE

"We, the Successors to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to

the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

“In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, our Imperial posterity may possess an express guide for the course they are to follow, and that on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These laws come to only an exposition of grand precepts for the conduct of the Government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our

other Imperial Ancestors.

“We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established.

“May the Heavenly Spirits witness this Our solemn Oath.”

As we see in this Oath, His Majesty made the Oath to the Imperial Founder and other Imperial Ancestors, to the effect that He shall maintain the ancient form of government. He said that He owes to the glorious Spirits of the Imperial Founder and other Imperial Ancestors and He made a prayer to them. He made also to them the solemn Oath never to fail in the observance of the Constitution:

In the United States, God is mentioned in the Declaration of Independence as it is mentioned in the Imperial Oath in Japan, in such words as “firm reliance on the protection of Divine Providence.” In the Articles of Confederation it is also mentioned that “It has pleased the Great Governor of the World to incline the hearts of the legislature.” God is not mentioned in the Constitution itself.

The Commonwealth of Australia has put in the preamble of the Constitution which it submitted to the English Parliament for approval (1900) the words thus: “Whereas the people of New South Wales humbly relying on the blessing of Almighty God, have agreed to unite.”

On the promulgation of the Constitution His

Majesty the Emperor Meiji delivered a speech.

IMPERIAL SPEECH ON THE PROMULGATION  
OF THE CONSTITUTION

“Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the supreme power We inherit from Our Imperial Ancestors, promulgate the present immutable fundamental law for the sake of Our present subjects and their descendants.

“The Imperial Founder of Our House and Our other Imperial Ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellishes the annals of Our country, is due to the glorious virtues of Our Sacred Imperial Ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavours, and that harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country, both at home and abroad, and securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors.”

In the Imperial Speech His Majesty said much about the welfare of the people, but He made no pledge to the people. He said, "Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby...promulgate the present immutable fundamental law for the sake of Our present subjects..." and "We doubt not but that Our subjects...will share with Us Our hope," etc.; but He did not make any oath to the people at all.

In the preamble of the Constitution, we find again such sentences as "hoping to maintain the prosperity of the State, in concert with Our people and with their support, We do hereby promulgate a fundamental law of the State, to exhibit the principles by which we are guided in Our conduct, and to point out what Our subjects are to be conformed to," or "We now declare to respect and protect the security of the rights and property of Our people, and to secure to them complete enjoyment of the same"; but not a word of pledge or oath to the people.

The Imperial Speech was an address to the subjects; and the preamble to the Constitution might be construed as a promise on the part of the Emperor to the people; but it neither took the form of a promise nor contract.

In a word, there is in Japan no idea of an oath on the part of the Emperor to the people. This is, as it has been, the characteristic of the Japanese nationality throughout the past centuries. If any

one overlooks this point he will not be able to understand the Japanese Constitution and the Japanese system at large.

## CHAPTER V

### THE AMENDMENT OF THE JAPANESE CONSTITUTION

With regard to the process of amendment, constitutions may be classified into rigid and flexible. In a rigid constitution, in order to emphasize its greater dignity and importance, the process of amending it is made in a form different from, as well as more difficult than, the process of passing an ordinary statute by the legislature. In this sense the constitution of Japan and those of many other nations are rigid, while in some nations, notably England, as there is no difference between the methods of changing the constitution and of enacting statutes, the constitution is said to be flexible.

As between these two a rigid constitution itself provides for its own amendment, and this power of constitutional amendment forms a vital part of modern constitutions (Friedrich, p. 117). This is true in theory, but in actual practice many amendments have been made in so-called rigid constitutions. In the United States, where the formal process of amendment is rather cumbersome, many constitutional amendments have taken place. Since its promulgation there have been twenty-one amendments. The first twelve were adopted to cure defects discovered early in the original constitution, the first ten of which, known as the Bill of Rights, were pro-

posed by Congress in 1789 in order to assure to both the people and the states that their rights would be protected against encroachment by the Federal Government.

Afterwards there were various amendments amounting to twenty-one altogether.

A certain writer in the United States (Crown, p. 117) says that the first ten amendments make up the so-called Bill of Rights of the National Constitution, and that they were designed to quiet the fear of wild opponents of the Constitution in its original form.

Another says (Mathew, p. 46), that the first twelve amendments were adopted to cure defects early discovered in the original constitution and that during the century following the adoption of the twelfth amendment, thousands of proposed amendments were introduced in Congress which failed to pass that body and only three amendments—thirteenth, fourteenth and fifteenth—were placed in the Constitution, the three being war amendments adopted in order to bring the fundamental law of the land into conformity with the new conditions resulting from the Civil War.

It is said that in the first century under the Constitution more than 1,800 amendments were proposed (Ames's "Proposed Amendments to the United States Constitution," 1789-1889, 2 American History Association Reports p. 43).

According to Hartman (p. 95), the first ten amendments were adopted almost immediately after the framing of the



constitution and were designed to protect the life, liberty and property of the citizens, the twelfth changed the method of electing the president and vice-president; the thirteenth, fourteenth and fifteenth gave citizenship and right to vote to the negroes, the seventeenth changed the method of choosing senators, the eighteenth prohibited the sale of intoxicating liquors, the nineteenth granted women the right to vote, the twenty-first annulled the eighteenth amendment.

The prohibition amendment (the eighteenth amendment being so called) was put into operation in 1920, but as its enforcement was found to be extremely difficult and led to many bad conditions in the country it was annulled by the passing of the twenty-first amendment in 1933.

These amendments furthered the growth of the American Constitution and make it a progressive one. Of course, not every change in the constitution has been an improvement; sometimes it is rather a senseless attempt in the eyes of foreigners. The eighteenth amendment (1919) known by the name of the prohibition amendment was passed and praised by the proposers as novel in that it grafted the branch of direct social legislation upon the rigid constitutional tree, but a few years after it was nullified by the twenty-first amendment. But taken as a whole, amendments have proved good and beneficial to the American people.

In order to emphasize the usefulness of the amendments of the Constitution an American author (Willis, p. 19) says, "If the constitution had not thus grown and developed, the chances are that it would long

since have been abandoned and perhaps our constitution and government have ceased to exist.”

As a matter of fact there has been in the United States hardly a time when the proposals for new amendment have not been legion, although an amendment of the constitution is to be thought a rare event. It is said that, as a matter of fact, the American constitution has been more frequently amended than the English. Regarding this fact, Mr. Mathews (p. 10) who classifies constitutions into two kinds, those which are written and cannot be easily changed and flexible, and those which are not written and can be easily changed, says, that this distinction is rather legislative than pragmatic, and says further, that although the formal written constitution is more or less rigid, it is in a broad sense much more flexible and has been extensively changed.

We cannot agree to this statement of Mr. Mathews; we do not think that American Constitutions have been amended more frequently than the English Constitution which undergoes changes every month. But it is true that the written constitution of the United States has been changed more often than is thought to be the case.

The Constitution of the Soviet Union has undergone many changes. In the Soviet Union, each constitution crystallizes the achievements of one epoch and prepares the way for a new one; a constitution records the living history of a revolution. Changes were made in the 1918 constitution, then in the 1924

constitution, and again in the 1937 constitution, which last is said to be the best constitution in the world. This Constitution was modified in the course of the first session of the Supreme Soviet of the U.S.S.R. (January 1938) and provides for the establishment of twenty-one peoples' commissariats. Many other changes were adopted, but the most important additional amendment was the modification of Article 49, whereby the presidium of the Supreme Soviet of the U.S.S.R. is empowered to decide upon the declaration of martial law wherever it may be necessary to do so in cases of emergency. Changes were made from year to year in accordance with the development of the country.

Such is an outline history of the written constitutions of the United States and the Soviet Union. It is otherwise in Japan.

The amendment of the Constitution is not prohibited in Japan; on the contrary its modification is clearly provided for and its process is set forth in the constitution itself. The preamble to the constitution says: "When in the future it may become necessary to amend any of the provisions of the present constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet." The provision of the constitution (Art. LXXIII) is to the same effect, which runs thus: "When it shall become necessary in future to amend the provisions of the present constitution, a project to that effect shall be submitted to the

Imperial Diet by Imperial Order.”

In Japan, an amendment of the Constitution is considered as a serious matter and the initiative is only in the power of the Emperor. This provision is well and good, for the right of making amendments to the constitution must belong to the Emperor Himself, because He is the sole author of it. A project of amendment is to be submitted to the Imperial Diet by Imperial Order, because the Emperor desires that a great law, when once established, shall be obeyed by the Imperial Family as well as by His subjects, and that it shall not be changed by the arbitrary will of the Imperial Family; thus the modifying power is strictly in the hands of the Emperor and no modification can be introduced into the constitution during the time of a Regency.

To arrive at a decision in the Imperial Diet the presence of a majority of at least two-thirds of the entire number of the members is required, for the reason that the greatest caution is to be exercised in regard to matters relating to the Constitution.

In this point the above provision of our constitution finds its parallel in those of many other nations.

The Imperial Diet of course cannot take a vote on any matter other than what is contained in the project submitted to it. The Imperial Diet cannot modify the project, because the modification of the project is the introduction of a different project, and thus interferes with the initiative power of the Emperor; the Diet is only to give or refrain from

giving its consent to the project.

By this process the Constitution of Japan may be amended, but no amendment of the constitution has been made since its promulgation until the present; during more than fifty years, not a single word has been changed, no project of amendment has been submitted to the Imperial Diet by Imperial Order, and no voice in favour of any constitutional change has been raised by the people. - Our constitution is indeed the best illustration of written rigid constitutions. We could hardly find other constitutions having an equal rigidity.

There are many reasons which explain this fact. One of them is that our people know well that the present written constitution is a gift of the Emperor to the subjects and are naturally inclined to keep it in its original form as much as possible. They hope to keep the constitution as a whole in the same form and in the same words as much as possible with that which was granted them from the Throne. Another reason is that our constitution is the exposition of grand precepts for the conduct of the government, as is shown in the preamble to the Constitution, and does not touch upon minor points of the government to such an extent as is the case in other countries' constitutions; therefore no change is needed for a long time.

In Japan we are accustomed to say that the constitution is an unchangeable Grand Precept; this refers of course to the great principles embodied therein

and not to all provisions contained in the document; but this attitude on our part makes us unwilling to change any provision of the constitution.

Thomas Jefferson, the father of the American Constitution, said that some men look at the constitution with sanctimonious reverence, and deem it as the ark of the covenant, too sacred to be touched. Our people show a similar attitude towards our Constitution. We know of course that laws and institutions must go hand in hand with social progress, and that, as the human mind becomes more developed and more enlightened and as new discoveries are made and new truths disclosed, and as manners and opinions change with the change of circumstances, institutions should advance also and keep pace with them; still we are not inclined to change our Constitution. We can satisfy our needs by means of interpretations of our written constitution and not by its amendment, thus keeping our Constitution intact in its original form.

We say that no amendment has been made in our Constitution since its promulgation; by this we mean that no change has been made in the provisions of our written document. The constitution in the broad sense is undergoing changes constantly. In this sense the constitution is not only a written document but also a statutory amplification, judicial decisions interpreting the written constitution and usages and the unwritten rules which have the force of law. They adapt themselves to the changes in social conditions. But even in this broad sense the Japanese constitution

does not undergo such frequent changes as occur in the constitutions of other nations.

The character of the constitution depends upon the character of those engaged in governing and the governed. Therefore if the character of either one or both of them is changeable the constitution of that nation will be changeable whether it is written or unwritten. In some nations their character being changeable the written constitutions are also changeable; and sometimes the constitution is a transient thing, changing like a kaleidoscope.

In Japan, where the character of the governing and the governed, is not changeable, the character of the constitution is not changeable. It has rather a permanent character. Even the minor points of the constitutional provisions have not been amended since their promulgation, and the essential provisions should never be changed. The provisions which state the grand principles of the Empire, such as "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal," "The Emperor is sacred and inviolable," "The Emperor is the head of the Empire" cannot be changed in the least. These provisions are the essential elements of our Constitution; they are identical with the constitution itself and if they were changed there would no longer exist in Japan any constitution at all. It is not possible for us even to think of their amendment. We, Japanese subjects, tremble at the mere thought of such a change.

Law is advantageous, of course, when it is in harmony with the actual necessities of society; and it may perhaps become necessary at some time in future to introduce modifications to a greater or less extent in the provisions of our Constitution so as to keep them in touch with the changing phases of society, yet the essential provisions of our Constitution undergo no alteration, and the fundamental principles of the national polity must continue unaltered forever.

As regards the amendment of the Italian Constitution it may be noted that the document, known as the Statuto, was promulgated by King Charles Albert of Piedmont on March 4, 1848. The Constitution was drawn up by the King and his close advisers; the people of Piedmont in no way participated. In conferring this document, the King described it as the "fundamental law eternal and irrevocable of the monarchy." And indeed, one of the grave shortcomings of the Statuto is that it contains no definite provision for amendment.

When men of the anti-Fascist opposition began accusing Mussolini of overthrowing the Constitution, he revealed his true intention on June 22, 1925, at the final session of the Fascist Congress. "The Constitution," he said, "cannot be a hook on which to hang each generation... day after day, we are obliged to violate it." (Egidio Real's article, "The Italian Constitution under Fascism," in *The Foreign Affairs*, an American Quarterly Review, October 1939, p. 153).



## CHAPTER VI

### THE CONTENT OF THE JAPANESE CONSTITUTION

The constitutional jurisprudence of Japan is very simple and easy of explanation. This simplicity is in the main due to the pure monarchical character of our national system. This statement of mine with regard to the Japanese constitution is quite at variance with Mr. Willoughby's view about the American Constitution. He says, "The Constitutional jurisprudence of the United States is an especially complicated one, and its principles are proportionately difficult of explanation and comprehension. This complexity is in the main due to the federal character of our governmental system" (Willoughby, p. 6).

Mr. Beck enumerates four basic principles of the American Constitution: "The first is representative government, second its dual form of government (federal and state), the third guaranty of individual liberty through constitutional limitation, the fourth, independent judiciary." Among these four principles, three of them are found in common in the modern constitutions of many nations, including the Japanese Constitution, but a dual form of government may not be found in the constitution of many nations, certainly not in our constitution.

In the Constitution of Japan, it may be said that there is no mention of special economic principles

properly so called; even if they do exist, still they are very few.

On the contrary, the American authors point out that there are many economic principles embodied in the constitution of the United States, and that there were many economists among its framers; these economic framers of the constitution have strived to put in the constitution principles of economy in favour of their own class rather than in that of all, the people. Mr. Beard had occasion to read voluminous writings by the Fathers of the Constitution, and was struck by the emphasis which so many of them placed upon economic interests as forces in politics and in the formation of constitutions. By reading these writings he found to his surprise that many Fathers regarded the conflict over the Constitution as springing essentially out of conflicts of economic interests, which had a certain geographical or sectional distribution.

Mr. Beard wrote a book designed to illuminate all the occasions in which discussion of the constitution appears, and says: "It was largely by recognizing the power of economic interests in the field of politics and making skillful use of them that the Fathers of the American Constitution placed themselves among the great practising statesmen of all ages and gave instructions to succeeding generations in the art of government" (Beard, p. 17).

We find no such trace in constitution-making in Japan. Although there are, in our constitution, rules

on taxes and duties which have a financial and economic character, they are of a different nature from those which Mr. Beard speaks of with regard to the American Constitution.

As a consequence, in Japan no constitutional struggle arises between bourgeois and proletariat with regard to economical problems. On the contrary, in the United States, where the constitution was written by men of property who expected to control the government, struggles of such a kind arise very often. The American Constitution contained grants of power ample for the needs of the nation when construed in harmony with the original purposes of the framers, and in the economic struggles wealthy men triumphed. Wealthy men's power increases in proportion to the increase in wealth. Wealth, corporately organized, flowed into fewer and fewer hands and gained added power through its concentration; then the age-old struggle took a new turn. Against the men of wealth rose a popular democracy driven into political action by economic suffering, and this democratic force turned to the federal government to match or overmatch its adversary. This is what is described by the American writers.

Struggles between the wealthy and poor are universal; we find them in every nation throughout the world; and in a country such as the United States they have a stronger constitutional character than in other countries; but in Japan, such a struggle has no constitutional character, and even if it has, it is an

exceedingly slight one. This is the effect of the difference between the Japanese Constitution and those of other nations in their nature and content.

Of the difference of our constitution from other constitutions as regards the centre of sovereignty in the state we shall write in the next chapter.

The contents of the Japanese Constitution are few in number, merely those regulations which concern the fundamental organization of the state and a few other points. There are no rules as to the election of the members of the Imperial Diet (they are regulated by the law of election and the ordinance of the House of Peers) and no regulations as to the constitution of the judicial courts (they are regulated by the law governing the constitution of the courts) and we need hardly say, no regulations for the election of the president.

There is also no provision in our constitution describing what Japan is, unlike the German Constitution (Art. II), where there is a provision which says that the territory of the Reich consists of the territories of the German states. This provision of the German constitution is now changed, as the Nazi Government abolished the German states as they were recognized in the Weimar Constitution. The American Constitution provides that new states may be admitted by Congress into the Union; but there is no rule corresponding to those provisions as are found in the Weimar Constitution.

As the Japanese Constitution mentions nothing

about the territory of Japan, although it provides that the Empire of Japan shall be reigned over and governed by the Emperor, we can not know clearly what Japan is from the words of the constitution, but we know by interpretation what Japan is and of what territories the Japanese Empire consists. According to ancient documents the dominions of the Empire, which went by the name of Ōyashima were composed of eight islands, but they increased from time to time, and the present dominions consist of Hokkaido, several islands of the Okinawa and of the Ogasawara groups, etc. in addition to what was formerly designated by the name of Ōyashima or to those islands mentioned in old books.

During the last forty-two years, Japan has added to her dominions Taiwan (Formosa), Chosen (Korea), and a half of Karafuto (Saghalien). This constant change in the territories is the reason why our constitution does not describe the Japanese dominions; if there was a description thereof it would have had to be amended every time some territory was added to Japan.

Whatever Japan is and whatever territories she possesses, her Constitution applies to all Japan, to the new dominions as well as to the old. But it is only the fundamental principles of the constitution that extend to new possessions without express decree. When the question arose whether or not all provisions of the Japanese Constitution apply to newly acquired Taiwan and whether all inhabitants of that island

have the same constitutional rights and duties as those of the old islands of Japan, the question was solved in the way mentioned above.

The question was solved in the same manner under the Constitution of the United States, when the dispute arose as to whether or not the constitution follows the flag, and whether the constitution established for the United States of America extends to the newly acquired Porto Rico and Philippine Islands. In that case the Supreme Court decided that the fundamental rights under the Constitution shall extend to all possessions but that the formal rights extend only as a result of express congressional action or treaty.

In England it is not altogether easy for even a lawyer to know what is the British Empire, the United Kingdom or British Dominions, but it is likely that they may be taken as follows. The British Empire means all territories over which the king exercises his sovereignty and the inhabitants of which owe their allegiance to him. These territories are called His Majesty's dominions or the British Dominions. This statement of the British Empire may apply to the Japanese Empire only by changing "King" into "Emperor."

The United Kingdom includes England, Wales, Scotland and six counties of Ulster called "Northern Ireland," but does not include the Channel Islands and the Isle of Man, nor, since 1922, the rest of Ireland which then became the Irish Free State. The

United Kingdom is governed in many respects by different laws, but for most constitutional purposes they form a single entity known as the United Kingdom of Great Britain and Northern Ireland. The Crown and Parliament are supreme over them all. This statement as to the British Kingdom does not apply to Japan; there is no united kingdom in Japan but only the Empire.

The question as to what is the status of the British Dominions was discussed in the Imperial Conference of 1926 at considerable length and its conclusion was: "Great Britain and the Dominions are autonomous communities within the Empire, equal in status, in no way subordinate one to another in any of their domestic or internal affairs, though they are united by common allegiance to the British Crown, and freely associated as members of the British Commonwealth of Nations." But as this statement was considered misleading, in a strict legal sense the Statute of Westminster (1931) was passed which partly assimilated the legal status of the Dominions to that established by convention.

The above statement as to the British Commonwealth does not apply to Japan. There is no such idea as the "commonwealth of nations" in the Japanese Constitution. Japan is a mono-state, mono-empire and all its dominion is mono-dominion.

There is no provision as to the National Flag. The case is the same in the United States Constitution; it lacks any provision for a National Flag. In the

case of the United States, there is an excuse for that. There the national flag changes when new states are admitted into the Union; therefore if the flag were provided for in the Constitution, the constitutional provision would have to be amended whenever new states come into the union. It is wise that the United States provides for its national flag in a statute which can be changed more easily instead of by the Constitution.

On the contrary, the Japanese national flag, the flag of the rising sun, is never to be changed, and is proper to be provided for in the Constitution which is not easily amended. The present writer, who has been making a study of the national flag of Japan for a long time, is of opinion that our constitution should contain a provision concerning the National Flag.

The German Constitution (Art. III) provided that the national colours shall be horizontal stripes of black-red-gold. It was changed to the flag of Haken Kreuz by the constitutional change of Ermächtigungsgesetz Hitlers. But in Germany, the principle that the national colours shall be provided in the Constitution has not been changed.

In recent years, the problem of symbols has received more general attention from political scientists than it used to be the case. Professor Hayes' searching inquiries into the nature of nationalism have focused attention upon the important role which flags, national anthems and the like play in rallying mass



sentiment.

The national flag of Japan is that of the rising sun. Our empire is the country of the rising sun from its beginning when heaven was separated from earth.

It is rather strange to see that the rising sun has some connection with the constitution-making of the United States. When Washington sat presiding over the Constitutional Congress on a low platform in a large leather chair (still to be seen in the old State House) stamped on the leather at the back of the chair was the picture of a sun. No one knew at first whether it was a rising or a setting sun; but when the constitutional document was ready for signing on the last day the convention met Monday, September 17, 1787, and the men were signing, Franklin pointed to the figure of the sun in the back of the president's chair and said that he had often wondered if it was a rising or setting sun; but now he had the happiness to know that it was a rising sun.

The new constitution of the Soviet Union has a provision for a national flag which says, "The state flag of the Union of Soviet Socialist Republics shall be of red cloth with a sickle and hammer depicted in gold in the upper corner near the staff and above them a red five-pointed star bordered in gold. The ratio of the width to the length shall be one to two (Art. 144)."

The contents of the Constitution of Japan are as follows:

- Chapter I. The Emperor.
- Chapter II. Rights and Duties of Subjects.
- Chapter III. The Imperial Diet.
- Chapter IV. The Ministers of State and the Privy Council.

Chapter V. The Judicature.

Chapter VI. Finance.

Chapter VII. Supplementary Rules.

It contains only seventy-six articles, each of which is very simple, consisting of only a few lines. One may memorize all of them with ease. But it embodies many fundamental principles of the state.

We are happy to have such a written constitution as we have now and such an unwritten constitution as we have had and still have. We are one people from the beginning of the Empire until the present, and shall be so to eternity. Mr. Elson of the United States remarks that the most remarkable thing about their great American union is the marvellous harmony among the forty-eight states that compose it. It is quite true of the United States of America; but Japan, being a mono-state has no need to unite many states. The same author tries to show the happiness of the American people by a comparative study of other nations, by saying: "For a fuller appreciation of our Union take a glance at the South American states, where there has been bloodshed and revolution almost constantly for a hundred years; they formed no Union. Or even glance at Central Europe, where the small independent states, with their jealousy and rivalries, are in a state of constant fear and turmoil, and are forced to maintain armaments for protection against one another." We quite agree with this statement; we know that in the United States the unity among the people is established more

firmlly than in England where the difficult questions of the Irish Free State and many self-governing dominions exist, and France where socialism, communism and fascism prevail, making the existence of a stable government difficult. But when he says, "Nothing is more marvellous in human government, past or present, than this union of ours," we shall reply to him that "Nothing is more marvellous in human history than the Japanese Empire which is reigned over and governed by an endless line of Emperors, the Emperor being the Son of Heaven whose right is divine and whose sovereignty is absolute without a single restriction."

If we say this, foreign critics are likely to say that we are going too far; some will look upon these words with derision; but if they study our history and scrutinize the daily devotion of our people to the Emperor and also see what the men of our army and navy and the people at large did in the Sino-Japanese and Russo-Japanese Wars, and their heroism in the Chinese Incident at present, they would be able to understand our national character.

Japan has been a monarchy from the beginning and will remain so for ages eternal, and no idea of a republic has existed or can exist. But such is not the case with the United States.

In the framing of the American Constitution, some framers proposed the principle of unlimited democracy, but others opposed it; some favoured a monarchy, with the second son of George III as the

American monarch, and said that a limited monarchy gives blessings which never have been derived from any republic, but the majority stood against it; some thought that the country should be divided into three republics, but the great majority wanted a single republic, and on that basis the Convention proceeded with its work.

Again it is said that there had been the idea of a kingdom before the Constitutional Congress was opened. A Congress was founded after the declaration of independence and was given certain powers, but it was weak and as time passed it grew weaker and weaker. Then, seeing the inability of congress to meet the needs of the country, some people thought it would be better to return to a monarchy with a good king at the head and Washington was mentioned as the candidate best fitted to head such a government.

When Washington heard this he burst out: "What astounding changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. What a triumph for our enemies to verify their prediction! What a triumph for the advocates of despotism to find it that we are incapable of governing ourselves and that systems founded on the basis of equal liberty are merely ideal and fallacious!"

## CHAPTER VII

### THE GREAT PRINCIPLES OF THE JAPANESE CONSTITUTION

#### SECTION I

##### THE PREAMBLE TO THE JAPANESE CONSTITUTION

The essence of the Constitution of every nation may be known from its preamble. If one should look at the preamble of the Japanese Constitution he may understand at once what character our Constitution has, and what kind of a state Japan is, and in whom the right of sovereignty is vested, and how the Japanese Emperor is kept sacred above the nation. The Supreme Court of the United States has decided that, the preamble of the Constitution should indicate the general purpose for which the constitution was established, and that if the intention of the framers of the Constitution does not clearly appear in some clause, the courts may resort to the preamble to that part of the constitution.

Mr. Crown says to the same effect thus: "Preamble is not a part of the Constitution, but it walks before it. By itself alone it can afford no basis for a claim either of governmental power or of private right. It serves, nevertheless, two very important ends: first, it indicates the source from which the Constitution comes, from which it derives its claim to obedience;

secondly, it states the great objects which the constitution and government established by it are expected to promote.”

This is the reason why almost all modern constitutions have their preambles prefixed to them.

The only exception to this is the French Constitution which has no preamble.

One explains this significant feature by saying, “Being adopted by a people fundamentally at odds, and quite convinced that their work will not last, the constitution embodied no substantive principles and no bill of rights.”

Thus by reading the preamble of a constitution we may know its nature, and by reading two of them we can compare and criticise two constitutions.

Mr. Friedrich, comparing the preamble of the constitution of the United States with that of the German Republic, says, “It will be seen that the stress laid upon peace and social progress is indicative of a more recent spirit, and one which would doubtless express itself forcefully in the preamble of any American Constitution written to-day.” He says further, “It is, therefore, often maintained that the real constitution of the American people is no longer fully expressed in the written document.”

We do not know whether many Americans are of the same opinion with this author or not, as the preamble of the American Constitution says, “In order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare,” thus including

therein "to insure tranquillity, promote welfare, secure liberty, establish justice," just as in the German Constitution, only lacking "further social progress." Whether Americans are content or not with the preamble of their Constitution, in Japan all people are satisfied with the preamble of the Japanese Constitution.

Mr. Friedrich says also of the constitution of the Soviet Union that the preamble of the constitution of the Soviet Union sets forth ideas which are as yet quite generally rejected in the United States. It is true that the essence of the Constitution of the United States differs from that of the Soviet Union, the essential character of the former constitution being aristocratic democracy while that of the latter is democracy in its extremest form. Stahlin claimed in his report to the Constitutional Congress on November 25, 1936, "That which millions of honest folk in capitalist lands have dreamed of, and still dream of, already exists in the U.S.S.R., and the new Soviet Constitution is the only consistently democratic constitution in the world."

In this way the American author compares the constitution of the United States with new constitutions in Europe by simply reading their preambles. Just in the same way a westerner would be able to understand the essence of the Japanese Constitution by reading its preamble. It is as follows:

## PREAMBLE

“Having by virtue of the glories of Our Ancestors, ascended the Throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of State to exhibit the principles by which we are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

“The rights of sovereignty of the State We have inherited from Our Ancestors, and We shall transmit them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

“We now declare Our will to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the ambit of the provisions of the present Constitution and of the law.

“The Imperial Diet shall first be convoked for the 23rd year of Meiji, and the time of its opening shall be the date when the present Constitution comes into



force.

“When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it according to the conditions imposed by the present Constitution, and no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

“Our Ministers of State on Our behalf shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.”

[His Imperial Majesty's Sign-Manual.]

[Privy Seal.]

The 11th day of the 2nd month of the  
22nd year of Meiji.

(Countersigned) Count Kuroda Kiyotaka,  
Minister President of State.  
Count Ito Hirobumi,  
President of the Privy Council.  
Count Okuma Shigenobu,  
Minister of State for Foreign  
Affairs.

(Names of the other ministers  
omitted)

## SECTION II

### SOVEREIGNTY IN JAPAN

In recent times there have arisen men who deny the personality of the state. Among these the most notable is Duguit, a French scholar. He says that the state is not a personality, and that only individuals have a personality, and that the state is not a collective person but a community composed of men with duties. He discards the doctrine of state sovereignty, and argues that as the state is not a personality, sovereignty, which is an attribute of personality, will have to be dismissed with the doctrine of personality. Laski of London University also denies the doctrine of sovereignty.

Wade does not deny the doctrine of sovereignty, but does not stress, at the same time, the notion of sovereignty. In his "Study of Constitutional Law," he says, "Majority of writers, and among them Austin, Holland, Dicey, have stressed the notion of sovereignty in their definition of constitutional law. It is possible to appreciate the working of the constitution without discussing the theory of sovereignty. We need to recognize only that all law is the product of forces." He adds that abstract questions of sovereignty or supremacy are repugnant to Englishmen; the state is accepted as a reality (Wade, p. 4).

Mr. Wade divides the writers of text books on the constitution into three classes, namely, historians, political

scientists, and lawyers; and says, "Lawyers who attempt the task of depicting the law of the Constitution are handicapped by the unreality of many of the legal terms which they must of necessity employ. For example it is a correct statement of law to say that the King is the fountain of justice, or that the king can do no wrong. Yet everybody knows that the king does not sit as a judge in his own courts, and that illegal acts are sometimes done in the name of the king by his servants."

The statements of such theorists are not correct. The state has a personality, and sovereignty is inherent therein and its nature should be studied.

For all that, the prevailing theories recognize the personality of the state and the existence of state sovereignty, and it is the duty of constitutional lawyers to explain the nature of sovereignty and to find in whom it is vested.

What then is sovereignty? According to some authors, sovereignty is a supreme will; they say that the state appears as an entity or corporate person possessing the supreme legal will, and this supreme legal will is termed sovereignty. Others say that it is the supreme authority, and that the essential characteristic of a state is the possession by it of a supreme law-determining authority, and that authority is sovereignty. They say that this authority connotes upon the one hand complete freedom of its possessor from the legal control of any other political authority whatever; and, upon the other hand, the right of absolute and exclusive jurisdiction over the legal rights and obligations of those subject to its

authority.

So far, these observations in regard to sovereignty are true and applicable to the Japanese Constitution almost without modification. At the same time, in Japan sovereign authority is far more absolute than that stated above. Sovereignty is absolute in Japan, permitting no single limitation whatever.

In whom then does sovereignty vest? It differs according to the nature of every nation. In the United States of America, it is the people; the people have sovereignty in the American sense of the word, the whole people as organized in government to express and adjust their will either directly or through the representatives. In Great Britain the King in Parliament has sovereignty. We think that the Parliament has sovereignty in the English sense of the word.

In Japan the sovereignty of the state vests in the Emperor. He is the sovereign of the state in the legal sense as well as in the political and social senses.

In the preamble of the constitution we find "The rights of sovereignty of the State We (Emperor) have inherited from Our ancestors, and We shall transmit them to Our descendants." This word corresponds with that provision of Article I of the constitution which provides that the Empire of Japan shall be reigned over and governed by the Emperor, and that of Art. IV which provides that the Emperor is the head of the Empire, combining in himself all rights of sovereignty.

Thus in Japan it is clearly written down in the constitution itself that sovereignty vests in the Emperor and that the Emperor is the Sovereign. His sovereign rights are absolute and He wields His own rights Himself on His own behalf, not for the state as an organ of the state. He is not an organ of the state, He is above the state, and in a certain sense He is the state itself. This theory is aboriginal to Japan, finding no parallel in the modern nations.

This is our opinion and all unite in this opinion at present, but a few years ago there prevailed what is called the organ theory, and the government gave out statements on that account thus:

#### THE FIRST STATEMENT (August, 1935)

The statement was given out and was distributed throughout the country through the various Ministries. It is as follows:

"The national polity of our nation was elucidated in the command given to the Imperial Grandson sent to earth by the Sun Goddess Amaterasu-Ōmikami that the land shall be reigned over and governed by an unbroken line of Emperors for ages eternal.

#### IMPERIAL EDICT QUOTED

"In the Imperial Edict issued by the Emperor Meiji when the Constitution of the Empire of Japan was promulgated, His Majesty clearly indicated that 'the rights of sovereignty of the State We have inherited from Our Ancestors, and We, shall bequeath them to Our descendants.' In Article 1 of the Constitution, His Majesty has also clearly indicated that 'the Empire of Japan shall be reigned over and governed by a line of Emperors unbroken

for ages eternal.'

"Thus it is clear that sovereignty absolutely resides in the Emperor. If there are theories which state that sovereignty does not belong to the Emperor, and that the Emperor is to be regarded as an organ for the purpose of exercising this power, they run absolutely counter to the basic principle of the national structure.

"It is to be regretted that academic theories in connection with the basic principle of the national structure have come to be advanced. Thus the Government places emphasis on clarification of the national structure and looks forward to the enhancement of national glory. The Government desires the co-operation of all circles in this connection."

#### THE SECOND STATEMENT

This statement, which reaffirms the indisputability of the sovereignty of the Throne, is similar to the first statement issued early in August, which failed to satisfy the military, but differs in that it is stronger and more specific in denouncing the so-called "organ theory" and in pledging the Government to work for its eradication.

#### SOVEREIGNTY REAFFIRMED

"On a previous occasion the Government made known to the public its convictions as to the principles of the national Constitution and clarified the will of the people on the subject, seeking to develop the fundamental character of the nation in all its glory.

"That the sovereign rights over the Japanese nation are vested in the Emperor is the fundamental principle of the Japanese Constitution and the immovable conviction of all Imperial subjects. The spirit of the Imperial Edict concerning the laws of the Constitution and all its articles rests there. The so-called 'organ theory' in regard to the

Emperor, which would make the Emperor a mere organ of the State, by indiscriminately adducing foreign precedents and foreign theories, runs counter to the sacred principles of the State of Japan and violates its fundamental character. Eradication of this theory is most strictly to be urged and all political education and all national affairs must be guided in the light of this fundamental principle, the like of which, in its glorious tradition, the world has never seen.

“Thus stands the conviction of the Government and thus must the people be taught to hold the same views on the subject for which the Government will exercise its unsparing efforts to gain real results.”

### SECTION III

#### THE DIVISION OF POWERS IN JAPAN

It is said in political science that, for securing the due recognition and protection of rights, the powers of government must be classified according to their nature, each to a different department of the government; and that this arrangement gives each department a certain independence, which operates as a restraint upon such action of others as might encroach on the rights and liberties of the people and makes it possible to establish and enforce guarantees against attempts at tyranny. This is the theory of checks and balances in government which are supposed to be essential to free institutions.

Practically the theory of three divisions of power is recognized by all the nations of the civilized world and is embodied in their constitutions in express

terms or not, as the case may be. Although some modern European writers on political philosophy and Prince Ito divide the powers of the state into two parts, the legislature and the executive, saying that the judicial power is no more than a branch of the executive power, the doctrine of classification into three branches, the doctrine borrowed from Montesquieu, is better than the doctrine of two divisions; and even those who adopt the latter doctrine explain practically the constitution of their own countries by availing themselves of the doctrine of three divisions.

In the Japanese Constitution there is no article which provides for the division of power into three branches as indeed there are no such articles in the constitution of many nations; but by writing, after the Emperor and the subjects, provisions respecting the Imperial Diet, the minister of state and the judicature in succession tacitly recognize the doctrine of three divisions.

The Constitution of the United States set up the framework of the National Government in accordance with the doctrine of the separation of powers, which teaches that there are three, and only three functions of government, the legislative, the executive and the judicial, and that these three functions should be exercised by distinct bodies of men in order to prevent an undue concentration of power.

This division of power into three branches in the Japanese Constitution coincides with what the triple



division theory teaches. This theory divides the sovereign power of the state into three branches and remarks that the legislature is the power to make laws and to alter them at discretion, the executive is the power to see that the laws are duly executed and enforced, the judicial is the power to construe and apply the law when controversies arise concerning what has been done or omitted under it. We recognise this theory and adopt it in our constitution which is the same in this point as many old and new constitutions in Europe and America; but we must beware of confusing the division of the modes of exercise of sovereignty with a division of the sovereignty itself.

The chief object of the classification of sovereign power into three branches is said to guard thereby against the possibility of any one man or small oligarchy getting control of the machinery of government. This may be true in Great Britain, where the kings were tyrannical getting control of government in early times, and where the King's power is at present limited; it may also be true in the United States of America where Congress once framed the constitution in favour of the wealthy class of the people, and where either one of these three organs tries to trespass on another's sphere. This may also be true in other kingdoms and republics where a similar state of things exists; but it is quite different in Japan.

In Japan sovereignty concentrates in one man, and

here is no necessity to guard against a possibility of that one man's abusing his sovereign power. In our country the sovereign power is absolute and indivisible, no one being allowed to divide it; and here, therefore, the three divisions only pertain to functions and not to the sovereign power itself. Our constitution allots a proper share of work to each and every part of the organism of the state, thus maintaining a proper connection between the different parts by assigning due functions to them. In this sense, our Constitution adopts the theory of three divisions; and we may point out that our Constitution is a limited Constitution, but not in the sense that the sovereign's power is limited by the constitution.

When Chesterfield wrote in the eighteenth century that England was the only monarchy in the world that could properly be said to have a constitution, he was thinking of a system in which there were acknowledged limits to the royal power. In the world of that time, constitutional monarchy meant limited kingship; and indeed the same view was held throughout the nineteenth century, and even the writers of the twentieth century take constitutional monarchy in the same meaning. In this sense Japan is not a constitutional monarchy, because in Japan no limits are set to the Emperor's power, the Emperor being almighty in the state.

Mr. Sidgwick's view, "Constitutional monarchies which existed in Europe were due to direct or indirect imitation of England and not to internal

invention" (H. Sidgwick, "The Development of European Policy," 1903, p. 20), may apply to many European monarchies, but not to Japan. Our constitutional monarchy is aboriginal to Japan, and not an imitation on the English model.

Here we may mention the institution of the Genro which is unique in Japan.

Many westerners ask us about the Genro, especially constitutional lawyers in Europe and America. It is because the Genro is not a constitutional organ in Japan: there is no provision regarding it, not even its name being mentioned in the constitution, in spite of its great influence in state politics. The Genro makes or unmakes a Cabinet, the Emperor asks its opinion on the question of war or peace and the conclusion of treaties; it is superior to the cabinet and the Privy Council. Then it is natural for foreigners to inquire concerning its character since they can not find such an institution in their own states. What is the Genro?

Some think it a kind of Regency; this is not correct. Regency is a constitutional institution clearly provided in the constitution, as witness, "A Regency shall be instituted in conformity with the provisions of the Imperial House Law. The Regent shall exercise the powers appertaining to the Emperor in His name" (Art. XVII). And the Imperial House Law provides in accordance therewith that "When the Emperor is a minor, a Regency shall be instituted. When he is prevented by some permanent cause from personally governing, a Regency shall be instituted, with the advice of the Imperial Family Council and with that of the Privy Council (Art. XIX).

The capacity of becoming Regent being limited to the Crown Prince and other Imperial Princes, no ordinary

subject can become Regent.

Therefore the Genro of course is not Regent as a body or an individual person, it only gives advices to the Emperor, and there may exist many Genro or one Genro at a time. This organ, if it may be called an organ, is a transitory one which came into being about the middle of the Meiji era and has lessened in importance at present.

Genro literally means elder statesmen, and at the outset there was a group of great statesmen who were the pioneers of the Meiji Restoration of 1868, and its functions are to act as a final advisory council to the Emperor.

Although it possesses and exercises its authority over the formation or dissolution of ministries as well as in the most important decisions in administrative affairs, it is not an executive organ, it does not like to be called an executive organ by others, it prefers instead to be called an advisory organ if it needs any name at all. The original members of the council were all clan representatives with Count Ito at their head and General Count Yamagata next in importance, and all of them conservatives, so that the Genro is said to be a counter-agent to constitutional democracy.

This invisible institution or non-constitutional body may have served some purpose at that time, but it was thought later to be an anachronism and unconstitutional, and the people do not favour it, rather they have tilted against its existence. It is decaying now and has no influence at present. The number of the members of the council decreased in process of time, a vacancy not being filled up, Prince Saionji, being the only surviving Genro, who is more than ninety years of age.

The Genro will soon become an organ of the past, without any hostile attacks by the people.

The real meaning of constitutional monarchy 'or

constitutional government differs according to time and place, when and where that monarchy or government exists; that is to say, it differs according to the age when this word is used and the state where it actually exists; so that those who speak of constitutional monarchy or constitutional government should have regard to the time, and the state where it exists. The words "constitutional government" has a different connotation not only between the Japanese and the European nations, but even among the European nations themselves.

At present, the democratic form of government is abandoned by many nations, after a time of apparent universal acceptance, and Fascism has come in. Although Mr. Magruder says that dictatorship is the outcome of popular ignorance of political and economic principles, and that a republic needs the vigilance of an educated electorate (Magruder, p. 5), we see many new dictatorships among peoples who have an abundant knowledge of political and economic principles. The threat of Fascism is not an empty one; of twenty-six European countries, democratic rights survive to-day in only ten; sixteen are ruled by Fascist or semi-Fascist governments. Even in the so-called democratic lands, democracy is on the defensive, if not in full retreat. In country after country the demand to outlaw the parties of the left wing is already a matter of practical politics.

This fact should provoke in thoughtful people a reconsideration of the foundations of democracy, and

among the topics which must be reinvestigated most closely is that of the nature and forms of constitutional government.

All dictatorships have certain common characteristics; indeed, the very fact that some governments can be grouped together as dictatorships shows that they possess points of similarity. But modern dictatorships also differ widely among themselves. They can be roughly divided into three groups; first the totalitarian dictatorships of Germany, Italy and Russia, secondly the Catholic dictatorship and thirdly political dictatorship (Speaman's "Modern Dictatorship," 1939, p. 15). Cf. also W. D. Stewart's "Dictatorship or Democracy," 1939, pp. 88, 110.

So far we have spoken of world politics at large; but as regards Japan no reinvestigation is necessary on this point. There the absolute sovereign power is vested in the Emperor since the beginning of the Empire, and at present He exercises His functions in accordance with the provisions of the written constitution, and will not fail to wield His sovereign rights. Such is the meaning of the constitutional monarchy of Japan.

Now we shall proceed to explain three divisions of power in Japan.

If once the constitution adopts the doctrine of three divisions, that doctrine ought to be carried out in practice as much as possible. Of course, it is not easy to determine under which head an act properly falls, although the organs which perform these functions may be clearly distinguishable. As a conse-

quence in some respects, they trespass upon each other's sphere or overlap; and this cannot but happen in a constitutional state, of whatever kind that constitutional state may be. We find that such is especially the case in the British Constitution, wherefrom Montesquieu derived his famous doctrine of three divisions; it seems to be a paradox, but it is the real fact; we see the three organs trespassing upon each other's sphere also in the United States; but we do find it in Japan, although she is the most elementary of all constitutional nations.

In Great Britain, the legislative function vests in the same organ as that of the executive. One and the same organ exercises both legislative and judicial functions. The House of Lords which is a part of the Parliament, was born a court of law. The privy councillors are frequently members of the House of Lords, and often are important members of the House of Commons. As to the Lord Chancellor, he is a judge, a member of the House of Lords, and a principal adviser to the king having a seat in the Cabinet.

At the same time in England there exists a complete legislative supremacy. There the parliament is at once a legislative body and a Constitutional Convention. Although most of the constitutions of the newer nations contain declarations of principles rather than binding rules and important guarantees of the people's rights most subject to the qualification, "except as legislature provide," making by this qualification the guarantees nugatory, or their observance

dependent upon the will of the legislative majority, legislative supremacy in the English constitution is conspicuous.

Under the title of "Constitutional Innovation;" Professor Goodhart says that, the more satisfactory solution would be to provide by statute that all private halls or other places in which public meetings are to be held must be licensed, the license to contain a provision.... ("The Cambridge Law Journal," 1936, Vol. VI, No. 1, pp. 23, 30).

There is no such legislative supremacy in the Japanese Constitution as in the English Constitution. There is no inequality between the legislative and other branches; the three branches are separate and independent of one another.

In this point, the American Constitution is nearly the same as with us; there the legislature neither enters into the sphere of the executive nor overlaps with it. Mr. Elson, a professor of history, writing on the constitution of the United States, remarks that the outstanding feature of that type of government is the separation of the legislative, executive and judicial powers of government into three departments, although the words "separation of powers" nowhere occur in the constitution; and that the American constitution did not follow the British parliamentary type of government; in contrast, it established an executive type in which the executive government is separated from, and largely independent, of the legislative department.

Now, in the United States, the executive is



separated from and independent of the legislature; but it seems that in that country the judicature has more power than its due, at least much more power than that which the judicatures of Japan, France, Germany, England and other nations have in their own states.

It is said that the peculiarity of the American Constitution is, that it intended to control its legislature as well as its executive and has created a tribunal with the power to enforce this.

In the United States judicial power is very great as it is the authority which can declare an Act of Congress unconstitutional. Congress is liable sometimes to pass legislation which seems to violate the constitution; then there must be some authority somewhere to decide whether a given piece of legislation is constitutional or not. That authority is vested in the Supreme Court, although it is not expressly so authorized by the Constitution. Such power was given to the court in the early days when an important case involving an act passed by congress was presented before the court. At that time the court declared that "it is the duty of the court to declare null and void an act of congress, if, in the opinion of the court, it violated the constitution; the constitution is the supreme law of the land, but the power of congress is limited, and to preserve that limit is one of the purposes of the Constitution; therefore a legislative act contrary to the Constitution is not law and it is the duty of the judicial branch of the govern-

ment to say what law is.”

Since that time the decisions of the Supreme Court have been considered final, and through the decisions rendered year after year, and the interpretations of the Constitution, the Supreme Court has built up a superstructure of law on the foundation laid by the framers of the Constitution, and in the meantime it expanded its authority until it has at present become very great.

It is so great as one president (Theodore Roosevelt) proposed at one time to place limitations on its authority. He contended that “by the abuse of the power to declare laws unconstitutional the Courts have become a law-making instead of a law-enforcing agency.” As a check upon judicial proclivities, he proposed a scheme for “the recall of judicial decisions.” This project he justified by the assertion that “when a court decides a constitutional question, when it decides what the people as a whole can or cannot do, the people should have the right to recall that decision when they think it wrong.” This is a judicial condition in the United States. We think it is not right that the court becomes a law-making body instead of a law-interpreting agency, but at the same time we also think it not proper for the people to have the right to recall the decision of the courts whenever they think it wrong; this is to make popular opinion on each occasion overrule the decisions of judges, and it injures the judicial independence which is an essential principle of modern constitutions.

See the "California Law Review," for March, 1938, p. 287, and for May, p. 437, "Use by the Supreme Court of the United States Supreme Court of Extrinsic Aid in Constitutional Construction" by Jacobus Ten Broek.

Happily no one complains in Japan of the judicial supremacy; our Supreme Court exercises its judicial power in the strict sense of the judicature, and the people rather contrive to extend the judicial power, in order to make its independence of the executive more clear. Here the judicature never trespasses into the sphere of the legislature or executive, and neither legislature nor executive intend to trespass into the sphere of the judicature, and the doctrine of the three functions is smoothly observed in actual practice.

Although Beard says, "In any country governed under a written constitution, such a body as our Supreme Court is essential to preserve the basic law from contemporary assaults" the Supreme Court of Japan is different from that of the United States (Beard's "Supreme Court and the Constitution," 1938, p. iv.).

As for the division of power in the United States, we see some who are in favour of it, such as Gerstenberg and Willis, and some who are against it, such as Strong and Clokie.

Prof. Gerstenberg has written as follows: "The Federal Constitution contains no specific declaration concerning the separation of powers, but the principle is derived from the statement which begins with the first three articles: (1) All legislative power shall be vested in the Congress of the United States; (2) The executive power shall be vested in the President of the United States; (3) The judicial power shall be vested in one Supreme Court

and in such inferior courts as the Congress shall . . . ordain or abolish. From this separation of the departments of government is derived the doctrine that certain governmental functions, because of their essential nature, may properly be exercised by only a particular branch of the government; that such function can not be delegated to any other branch; and that one branch may not interfere with another by usurping its powers by supervising their exercise (Gerstenberg's "American Constitutional Law," 1937, p. 64). He goes on:

"But the rule of separation of powers is by no means absolute. The Constitution itself expressly permits a certain amount of commingling of powers by setting up a system of checks and balances. Thus the president may veto legislation and may grant pardons; the legislature may impeach members of the executive and judicial departments and participate in the appointment of the governmental officials; and although the Constitution does not expressly so provide, the judiciary may declare legislation unconstitutional and may restrain the doing of illegal acts of the executive." (ibid. p. 200)

Prof. Willis of Indiana University has an opinion which differs a little from that of Gerstenberg, which is as follows:

"The correct position is that the doctrine of the separation of governmental powers is an American doctrine and an implied doctrine of the United States Constitution, and of those state constitutions which do not expressly set it forth. The doctrine was undoubtedly impliedly written into our Constitution because of the influence of Locke, Montesquieu, and Cromwell's Institute of Government. It is in the spirit of the seventeenth-century English history, when the three departments of government in England were fighting for their independence. The President re-

presents a Tudor or Stuart King; Congress represents Parliament; and the courts of the United States, the court of England.

"Yet after 1683, England departed from this doctrine and has never returned to it. However, the framers of the Constitution of the United States, after copying what they regarded as English practice and Montesquieu's theory, themselves further emascuated the doctrine by their system of checks and balances; and in the remaining history of the United States, the Supreme Court has changed the law of the separation of powers, until now it is very different from what it was when it left the hands of the Fathers.

"It is, therefore, an open question whether or not we now have this doctrine at all under United States constitutional law." (Willis's "Constitutional Law of the United States," 1936, p. 134)

Some opponents against the separation of power are, as said above, Strong and Clokie.

Strong says as follows ("The New Soviet Constitution," 1937, pp. 72, 73):

"The most important difference in form between the Soviet government and that of capitalist democracies is its unity of state power. Most parliamentary democracies maintain a system of checks and balances, intentionally devised to make government insufficient. The concept that government action should respond slowly to the 'vagaries of the popular will,' lay behind the division of power into legislative, executive, and judicial.

"In America divided power operates to delay government action. Laws passed by Congress may be vetoed by the President; those approved by President and Congress alike may be declared unconstitutional by the courts."

Clokie says as follows ("The Origin and Nature of

Constitutional Government," 1936, pp. 106, 108):

"Most writers had treated the English system as though it exemplified the principle of separated powers, though unity of executive and legislative direction is obviously the key to English politics. Separation of power has also been claimed as an American principle by all the commentators. But if there is one thing certain about the American system it is that executive power is not completely in the hands of President or governors, nor legislative power in those of Congress or assemblies, owing to the contradictory principle of checks and balances which vitiates that of separation. In France an increasing number of treaties are abandoning this principle, which one writer has called 'the greatest political error of the last two centuries.'

"This doctrine of separate powers, like that of fundamental rights, received credence as the result of experience with the executive's invasion of the individual's private rights. Under the former absolute monarchies, and in a lesser degree under some semi-constitutional governments, the danger to property, to equality before the law, and to personal liberty came in a large degree from the executive. Until the middle of the nineteenth century the struggle was chiefly against the arbitrary conduct on the part of hereditary princes. Constitutionalism was the synonym for limitations upon monarchs. Accordingly, the theory of separate powers, which would give this limitation, was received with enthusiasm as the first concession to the liberalism of the rising bourgeoisie. And, so indeed it still remains in those few backward countries in which hereditary or newly established Kings are dominant factors."

## CHAPTER VIII

### THE EMPEROR OF JAPAN

#### SECTION I

##### THE DIVINE RIGHT OF THE EMPEROR

Article I of the Japanese Constitution says: "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." This is the very foundation of the Constitution and of all political institutions which are to be found in Japan. Article II says: "The Imperial throne shall be succeeded to by Imperial male descendants," thus adopting the principle of the Salic Law which excludes females from the throne. Article III says: "The Emperor is sacred and inviolable." Article IV says: "The Emperor is the head of the Empire combining in Himself the rights of sovereignty, and exercises them according to the provisions of the present constitution."

Our constitution, differing from those of other nations, treats of the Emperor in the first chapter, relegating the subjects and the Diet to subsequent ones.

The Emperor of Japan is the Heavenly Sovereign of the state. He has the rights of sovereignty, in other words the rights of sovereignty are vested in the Sacred Throne of Japan, and this Sacred Throne is said to have been established at the time when the

heaven and earth became separated. Our Emperor is heaven-descended, divine and sacred. He has divine right and should be revered by all people. Our people look upon Him with reverence equal to worship. In Japan there is the Emperor-Worship.

Perhaps it may sound extraordinary to a foreign ear if we say that Emperor-Worship exists at present in Japan, and that the Japanese believe in the sacredness of their sovereign; but it is none the less true.

In our country, the earlier conception that the Emperor is a divine and mysterious personage, the Son of Heaven, the supreme and absolute fountain of authority, is still retained. His portrait is kept in the schools and public offices for the sake of worship; in ordinary times it is carefully stored in a holy place, especially consecrated for the purpose, and only on national holidays, such as the New Year's Day, the anniversary of the reigning emperor and other special occasions it is brought forward in order that profound obeisances may be made by all who come before it.

We keep the name of the Emperor sacred and do not mention it in ordinary conversation. When we wish to speak about the emperor we use the words "His Majesty," just as in Europe men speak of God as "The Deity" and of Christ as "Our Saviour." No Japanese dare doubt the divine origin of their Mighty Ruler. He is in our eyes the Son of Heaven. He is in our politics utterly sacred.

As our Emperor has the sovereign power by divine right of inheritance, so He has its symbols. Article X



of the Imperial House Law provides: "Upon the demise of the Emperor, the Imperial heir shall ascend the throne, and shall acquire the Divine Treasures of the Imperial Ancestors. The Divine Treasures consist of a Mirror, a Sword, and Jewels, which have been bequeathed by the first Imperial Ancestress, the Sun-goddess Amaterasu Ōmikami, to her descendants as symbols of the Imperial power.

However strange or even extraordinary this statement may sound to some foreigners still they are true; at least, we are taught to take them to be true, and we believe this truth.

Mr. Holton D.C. in "The National Faith of Japan" ("A Study in Modern Shinto," 1938, p. 123) has written about Amaterasu Ōmikami as follows:

"Sun Goddess, Amaterasu Ōmikami is officially defined as the most illustrious of the ancestors of the Imperial Line and as the great organizing spirit that laid once and for all the characteristic foundations of the Japanese state. She is thus accorded a central position not only in the rituals of the Shinto shrines, but also in the carefully supervised nationalistic instruction imported to youth in the schools of modern Japan.

"She is at one and the same time the symbol of the everlasting state, the all-wise and all-good progenitress of the great nation family, and the mighty ruler of the unseen powers of the spiritual world that guard the destiny of the nation, and to whom the people pray. She is the center of the loyalty and patriotism that bind the nation about the throne. She is representative of the ideal cohesion of the state and the emblem of the *esprit de corps* of the nation. She is commonly approached

by her worshipers in an overglow of emotional fervour that repudiates as unnecessary, and even as impious or disloyal, any attempt at the appraisal of her real objective and historical validity."

This statement of Holton's may be called correct.

What Mr. Machin says of our Emperor is partly correct.

He says:

"Many deem their national state to be an entity apart from its territory or inhabitants. They treat it as a kind of pale, pantheistic deity to which they should do obeisance and sacrifice. This notion was prevalent in Germany prior to the Great War; Italian Fascism has much of the same notion. The Japanese have it personified in their emperor. The Nazi have it. The Russians have a variation of it in their collectivist state ("Politics in the World State," by A. S. F. Machin, 1938, p. 83).

This is one of the greatest causes which make all and every Japanese cherish a whole-hearted and absolute devotion to their Ruler. To the majority of Japanese subjects, the highest ambition in life is to lay down their lives for the Emperor. It was to satisfy this ambition, if we may call the virtue of loyalty an ambition, that Admiral Togo gave a crushing blow to the Russian fleet in the naval battle of the Japan Sea, and that Prince Ito, the chief framer of the Japanese Constitution died at the hands of an assassin in Manchuria, and that General and Countess Nogi took their own lives to accompany the Emperor Meiji to the world beyond.

The Emperor is sacred and inviolable, His person is protected by the law of treason, of which any one

is guilty who forms and manifests by act or writing any intention to kill, destroy, wound, maim, imprison or restrain the Emperor. This inviolability of the sovereign may be the same in all monarchies, but it finds its widest application in Japan where the Emperor's person is the holiest of the holy.

He is inviolable, no law has power to hold Him accountable to it. The English maxim "The king can do no wrong" applies literally to the Japanese Sovereign without the slightest modification. The legal maxim "The Emperor can do no wrong" has two applications in Japan, one is political or constitutional, and the other is legal or judicial.

Constitutionally the Emperor is inviolable. He is not responsible for any act whatever and to no one whosoever. In the preamble of the Constitution the Emperor says, "Our Minister of State, on Our behalf, shall be held responsible for carrying out the present Constitution," thus making His minister responsible on His behalf. He keeps Himself quite irresponsible, and the minister cannot plead the orders of the Emperor as a defence for any wrongful act. No one raises any objection to this principle of the sovereign's inviolability.

The case is similar in England. There "the king can do no wrong" means that the king is not liable for any act of his ministers, but ministers are liable for every royal act; and practically in England no administrative act can be done by the king without the countersignature of a responsible minister; and no

one can plead the royal order as justification of an illegal act.

Of course Japan is a constitutional monarchy and a law-governed nation. Every one should conduct himself in accordance with the rules of law, and the Emperor has indeed to pay due respect to law, but the law has no power to hold Him accountable to it.

Legally also the Emperor is inviolable, neither civilly nor criminally is He liable, no claim could be raised against Him, and no execution can be levied. In Japan, there exists no such petition of right in a judicial matter as exists in England, where a claim against the king may be prosecuted by petition of right if his consent to the proceeding can be obtained.

Todd says that as the sovereign is the fountain of justice, he prosecutes, through his officers, offenders and the summons which compel them to attend court are issued in his name, but being above the law, the sovereign himself is exempt from prosecution, and that if the sovereign should commit a criminal act the erring prince must be left to the rebukes of his own conscience, and to his personal accountability to God alone (Todd's "Parliamentary Government," p. 1123). Some English writers go so far as to state that the sovereign could, with absolute immunity, shoot his prime minister. An English lawyer explains the irresponsibility of the king by saying that, as justice is administered in his name the process of his own courts cannot be directed against him.

In England the rendering of justice is one of the earliest

and most important of royal functions, and it plays a great part in constitutional history.

The Crown still retains the power of appointing judges for which purpose letters patent are employed. Although practically the nomination of judges rests with ministers, still in theory the appointment of judges is formally made by the Crown, and their authority is derived from the Crown.

The courts are the king's courts and the defendant is summoned to the court by the king's command.

In Japan, not only the person of the Emperor, but His name is also sacred. We keep the Emperor's name in holiness and never use it in our debates. The injunction in England "It is contrary to parliamentary etiquette to import the name of the sovereign into debates in order to influence either House; neither is a member permitted to speak in slighting terms of his Sovereign" applies to Japan. No one in Japan may import the name of the sovereign into debates, and no one shall speak in slighting terms of the sovereign. We keep our sovereign's name holy.

It is partly because of this national reverence to the ruler that the wording of the Constitution is untechnical as is sometimes pointed out by foreign scholars. The word "shall" is purposely omitted in provisions relating to the Emperor, for instance; Article V. which runs "The Emperor exercises the legislative power with the consent of the Imperial Diet" does not use the word "shall" and say "The Emperor exercises" instead of "The Emperor shall exercise." Such a fact may be regarded as a key to

understand the nature and function of the Japanese Constitution

Our Emperor has the divine right and what was thought and said by James I of England hundreds of years ago may apply to our Emperor at the present time as well as of old.

James I of England was imbued with the doctrine of the divine right of the king and their semi-divine authority, and in effect he claimed for himself as against parliament full sovereign power. He had, of course, much influence to support his theory, both in the House of Lords and in the Commons, but could not succeed. James II, who thought also of the divine right of the king, was expelled, and the decision of Parliament to declare vacant the throne by reason of the flight of the king, and to offer it to William and Mary, terminated the Stuart doctrine of the inherent divine right of kings.

Thus, although the British sovereign neither had nor has a divine right, the Japanese sovereign had and has it.

This difference between the sovereigns of the two great island nations owes its origin to the difference in the natures of their sovereigns. Our Sovereign is of divine origin and inherits the throne from His Divine Ancestors, while the English king was at one time the king by election, and even when the throne became hereditary, the king's power was limited by many acts and documents.

Accustomed as we are to think of the kingship as

hereditary, it must be remembered that in many nations election was the basis of kingship, for instance in England in old times, and in some continental states at present.

The ancestors of the English people, that is the Angles and Saxons, were not in their old homes governed by kings; they came to England without a king and lived therefore some time without a king. But soon after they landed there they tried to have a king. This was the natural result of the state of constant warfare on which they then entered. War cannot be carried on successfully without unity of will and unity of plan. A rude people cannot reach this unity in any other way than by making a king to rule over them, even those German tribes which had no king in time of peace elected one man to lead them in time of war, and the wars of the Angles and Saxons in Britain were so long and fierce that such leaders were needed for many years. Thus leadership early passed into kingship.

In Saxon times the Witan, representing the development of the more ancient practice of election by the armed manhood of the tribe, elected the king. This continued to be the case, and afterwards, kingship tended to be hereditary, the king was chosen out of one family. The member of the family chosen was the one whose age and other qualities marked him out as fittest to rule. This was the king by election in the Saxon times.

The position of the Norman kings was very different

from that of the Saxons and this was partly the necessary result of a position acquired by conquest, partly the consequence of feudal ideas derived from the continent, still the first four Norman kings were elected ones.

Besides the English there were many nations who had kings by election in old times, and even at present we see many kings by election. The people of these states do not think it necessary to the kingdom to have a king on the hereditary system for its existence and continuance. In such a state as that it is impossible to maintain the theory of the divine right of the king.

Mr. McGovern, in his "Modern Japan" (1920, p. 123), has written as follows about the Emperor-Worship in Japan:

"The first of these features alone shows how extraordinarily alien the conceptions common in Japan still remain to those of Anglo-Saxondom. Though the principle of monarchy has never seemed stronger in England than it does at the present time, yet the conception of the Sovereign has of course developed into the idea of his being the symbol of the nation, a necessary part of the national and historical tradition and outside the ken of practical politics and administration.

"In Japan, where the Imperial principle is even more strong, a different mode of interpretation has been adopted, and the earlier conception of the Emperor as a divine and mysterious figure, the Son of Heaven, and the supreme and absolute fount of authority, has been maintained, and in recent years even augmented."

This statement of McGovern's is correct.



SECTION II

THE PERPETUITY OF THE IMPERIAL THRONE

The Sacred Throne of Japan is inherited from the Imperial Ancestors, and is to be bequeathed to posterity. At the beginning of the preamble of the Constitution the Emperor Meiji declares: "Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal We hereby promulgate a fundamental law of the State" and says also, "The rights of sovereignty of the state, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants."

Since the time when the First Imperial Ancestor inaugurated the country, the splendour of the Sacred Throne transmitted through the unbroken line of one and the same dynasty has always remained as immutable as that of the heavens and the earth, although the country has not been free from occasional checks to its prosperity nor from frequent disturbances of its tranquillity.

This is a history, not a theory,—real fact, not an ideal.

As to the succession to the Throne, there have been plain instructions since the time of the First Imperial Ancestor, and in obedience to these instructions, the Throne has been transmitted to the sons and grandsons of the Emperors, and this rule remains immutable for all ages. As regards the order of succession, minute provisions have been made in the Imperial

House Law; but these provisions are not expressed in the Constitution, because of the fact that no interference of the subjects is ever to be tolerated regarding them.

The first Article of the Constitution affirms this principle and declares at the outset that the Empire of Japan shall, to the end of time, identify itself with the Imperial dynasty unbroken in lineage, and that the principle has never changed in the past, and shall never change in the future, even to eternity. It is intended thus to make clear forever the relations that shall exist between the Emperor and the Empire.

That those express provisions are specially mentioned in the Articles of the Constitution in no wise implies that any newly settled opinion thereon is set forth by the Constitution; on the contrary, the original national polity is by no means changed by it, but is more strongly confirmed than ever.

The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal; I say a line unbroken for ages eternal; the universal belief in Japan is in the eternity of our Imperial dynasty, the one unchanging dynasty stretching back until its origin is lost in mythus. The Imperial dynasty is, according to the Japanese expression, coeval with heaven and earth. There are no Plantagenets, no Stuarts in Japan as you find them in English history, nor Tang, Sung and Tsin dynasties as in Chinese history. As our Imperial line is eternal, coeval with heaven and earth, there

is no dynasty properly so called; if any, it is only one dynasty. Our Imperial House has no special name to identify itself or to distinguish it from others; it has no clan or family name.

The expression "coeval with heaven and earth" is perhaps of Chinese origin. It is used often in the treaties between the two countries. For example, in the treaty of 1871 Art. 1 we find: "Henceforth the friendship between China and Japan shall be increased and shall last like heaven and earth forever."

The Japanese people are proud of the unbroken lineage of their Imperial House and mention this fact on every solemn occasion in private as well as in public meetings.

The Sacred Throne of Japan is unbroken in every sense of the word.

The Emperor never dies, He has the attribute of legal immortality, Emperors A, B, C may die, but the Emperor survives them all. For immediately upon the decease of the reigning Emperor His Emperorship by act of law, without any interregnum or interval, vests in the Emperor's heir.

This corresponds to that which is said in early times by Blackstone of the English king (Blackstone, Vol. I, p. 249). Hereon Mr. Chalmers remarks, "It is true that the king never dies, the demise is immediately followed by the succession. There is no interval; the sovereign always exists, the person only is changed."

In England, by successive statutes culminating in

the Demise of the Crown Act, 1901, the death of the king has no effect on tenure of office of any kind, a distinction being thus drawn between the Crown in its official and its personal capacity. It is an accepted doctrine that the king never dies, in the sense that there is no interrégnum. The moment the monarch expires, the royal dignity vests itself in the heir. This means that on the death of the sovereign, the new monarch *ipso facto* as well as *ipso jure* becomes king.

This is the statement ordinarily made in England, as well as in other monarchies in early times as well as at present. But in Anson's "Constitution" (p. 19) we find something different from this statement. It follows:

"The king, it is said, never dies, and the throne is never vacant. The legal theory, though based on practical convenience, was found to be extremely inconvenient when James II fled the country, and it became necessary in the interests of good government to declare that, in spite of legal theory, the throne was vacant. The object is now attained by different means. Provision is made by statute for continuity in the administration of justice and the course of executive government, independently of the demise of the Crown."

The Sacred Throne is not for a single moment to be vacant. Therefore the Imperial House Law provides by whom the Imperial Throne shall be succeeded to, and also that upon the demise of the Emperor, the Imperial heir shall ascend the throne, and shall acquire the Divine Treasure of the Imperial Ancestors (The Imperial House Law, Art. X).

At the same time the Imperial House Law (Art. XI) provides for a Coronation. It says that the ceremony of Coronation shall be performed and a Grand Coronation Banquet (Daijosai) shall be held at Kyoto. The same law (Art. XII) provides that upon an ascension to the Throne, a new era shall be inaugurated, and the name of it shall remain unchanged during the whole reign. In agreement with this established rule of the Imperial House Law and also with the rule of the first year of Meiji, eras have been formed; Meiji is the era of the Emperor Meiji, the grandfather of the reigning Emperor, Taishō is that of the Emperor Taishō, the father of the Emperor, and Shōwa is the present era.

As the Throne vests in the heir the moment the Emperor expires, it seems not to be necessary to perform the Coronation Ceremony; but its performance is enjoined. A similar ceremony is performed also in a republic or democratic states, so why not in the monarchy? We find such a necessity more urgent in a monarchy than in a republic, and most of all in our country.

The ceremony of the Coronation is, in our country, not merely a form, an ornament and a solemnity of honour; instead of that it is an essential of monarchy. Therefore it is provided for too in the Imperial House Law, which is entitled to the same respect as the Constitution. This ceremony serves as the occasion of a solemn recognition of the Emperor by His subjects throughout the whole country, and affords Him an

occasion of solemnly showing them His oath to the Imperial Ancestor that He will promote the welfare of all people within the boundaries of His dominions and never fail to be an example to His subjects in the observance of the laws.

In England the Act of Settlement (1701) provides for the taking of the Coronation Oath as an essential part of the duty of the king, and he could not carry out this plain obligation if the Coronation Ceremony were omitted.

The Coronation Oath as taken before 1910 in England was:

Archbishop "Will you solemnly swear to govern the people of this realm according to the Statutes of Parliament agreed on and the respective laws and customs  
' of the same?"

King "I solemnly promise so to do."

Archbishop "Will you..."

King "I solemnly promise so to do."

There followed many questions and answers. But in accordance with social progress this formulary has been reformed, and at present, the form of the declaration is determined by the Accession Declaration Act, 1910. It is as follows:

"I do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful protestant, and that I will, according to the true intent of the enactments which secure the protestant succession to the Throne of my realm, uphold and maintain the said

enactments to the best of my powers according to law.”

In contrast to this oath, the Emperor of Japan swears in His Oath always to the Imperial Founder and other Ancestors. As an instance thereof we have the Imperial Oath used on the occasion of the promulgation of the constitution (cf. Imperial Oath at the Sanctuary of the Imperial Palace at p. 53).

In that Oath His Majesty says that “We, the Successors to the prosperous Throne of Our predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that etc.”

In England the sovereign is considered to come of age on attaining the age of eighteen and until he reaches that age the royal functions will be exercised by a Regent. The Regency Act, 1937, deals with these matters, and thus a permanent Act has been established (“Annual Survey of English Law,” London School, 1938, p. 17). It is the same in Japan; the Emperor shall attain his majority at eighteen full years of age, and when the Emperor is a minor, a Regency shall be instituted. The Regency shall be assumed by the Heir-apparent or the Kotoison, being of full age of majority (The Imperial House Law, Art. XIII, XV, XIX, XX. In case there is no Heir-apparent, the Imperial grandson who is Heir-apparent, shall be called Kotoison).

### SECTION III

#### THE JAPANESE NAME OF THE EMPEROR (TENNO)

In Japan the Emperor is called “Tenno” which

literally means Heavenly Sovereign, "Ten" meaning heaven and "O" sovereign. This is the name of the Sacred Throne of the Japanese Empire, a historical name throughout all periods from the first Emperor Jimmu Tenno down to Meiji Tenno, Taisho Tenno and the present Tenno, the living Emperor being simply called "Tenno."

Sometimes we have called our Emperor "Kotei" which is of Chinese origin and was applied to the Chinese emperor when China was a monarchy. At present it is the title of the Manchukuo emperor. We used to translate the German Kaiser and Russian Tsar into "Kotei," in the same way as we represent the British Emperor of India, Italian Emperor of Ethiopia and Siamese Emperor as "Kotei."

"Kotei" means Emperor in general; we have often ourselves called our Emperor "Kotei" to designate Him in foreign as well as domestic affairs. This style may neither be a mistake nor inaccurate, the distinction being very difficult to be drawn between Kotei and Tenno. But on reconsideration we have come to think it more accurate to call our Emperor Tenno which literally means Heavenly Sovereign than Kotei which means Emperor in general. Tenno is aboriginal to Japan, having been used from the time of the first Emperor Jimmu Tenno during more than two thousand and six hundred years.

At the beginning of the Meiji era, the very year of the Restoration, 1868, in January, when the Emperor addressed the representatives of the foreign



nations, He called Himself Tenno, and spoke to the effect that "hitherto you have used the word Taicoon to indicate the Japanese sovereign, but henceforward you are to use Tenno instead."

In the treaty between Japan and Spain which was concluded in September, 1868, the first year of Meiji, we find the designations "Sa Majesté l'Empereur (Tenno) du Japon"; in the treaty with Germany, January, 1869, "Seine Majestät der Tenno von Japan," and in the treaty with Hawaii, July, 1871, "His Imperial Japanese Majesty the Tenno."

They are quite right words and suit well our long established custom. But unhappily the Government began later to use Kotei instead of Tenno to indicate our sovereign in declarations, proclamations and other documents, which has irritated Japanese historians and men of Japanese spirit. The style "Kotei" continued some sixty years; but in the revival of the Japanese spirit at present, as our people insisted on restoring the former appellation of Tenno as our Throne's holy name, the Government has consented thereto, and proclaimed through the Foreign Office that, the name of the state is the Great Nippon Empire and that of the sovereign is Tenno.

The above proceeding is in accordance with the provisions of the Constitution.

The Constitution calls the emperor Tenno; the title of Chapter I of the Constitution is Tenno; Article I of this provides that "The Empire of Japan shall be reigned over and governed by a line of Tennos un-

broken for ages eternal," and Article III provides that "Tenno is sacred and inviolable." The style of address for the Emperor is His Majesty, as Article XVII of the Imperial House Law declares that "The style of address for the Emperor, the Grand Empress Dowager, the Empress Dowager and of the Empress, shall be His, or Her or Your Majesty," and the Japanese for "Majesty" being "Heika," we are used to calling our sovereign Tenno Heika. We say "We shall be loyal to Tenno Heika," "We must go to war and bravely fight and die in behalf of Tenno Heika," "Long live Tenno Heika."

Heika means "under the holy palace;" which implies that we have no access to the Emperor's person but kneel down under the palace where our august sovereign sits above, holy and high.

Our Emperor has his personal name "Hirohito," and He uses this name in the Sign Manual; but it is only the Emperor himself, who calls Himself by that name, no one addresses Him by His name.

The regular formula which came to be used in Imperial Rescripts was "The Emperor reigning over and governing the Country of Eight Great Islands" (*Ōyashima shiroshimesu Sumeramikoto*)—*Ōyashima* means "Eight Great Islands," *shiroshimesu* means "reigns over and governs," *Sumeramikoto* means the "Emperor."

In England, according to Royal and Parliamentary Titles Act, 1927, the King's style and title are as follows: "George V by the Grace of God, of Great Britain, Northern Ireland, and British Dominions beyond the seas, King, Defender of the Faith, Emperor of India."

#### SECTION IV

##### THE SOVEREIGN POWER OF THE EMPEROR

In Japan the Emperor reigns over and governs the Empire. He does this with absolute authority, that is by Divine Right inherited from the Ancestors. It is true that the Emperor always desires to promote the welfare of His beloved subjects and hopes to maintain the prosperity of the state, and that He has declared also that He will respect and protect the security of the rights and of the property of His people, but he did not make an oath to the people in that regard and His Divine Right is not in the remotest degree eclipsed by this declaration. He has indeed instituted the Imperial Diet, but He is not under it, He can dissolve the House of Representatives and prorogue the House of Peers, He gives or withholds His sanction to or from law, that is to say, He can refuse to give His assent to the bills in the Diet and His refusal is not unconstitutional.

In this point the Emperor of Japan differs from the King of England. In England sometimes it is said that the Crown can refuse its assent to a Bill of Parliament, but the Crown has not refused its assent to a Bill since the reign of Queen Anne, and exercise of this prerogative to-day would be unconstitutional. Again it is said that, as the King is an integral part of the legislature his assent is required to all Acts of Parliament, but that as he only acts on the advice of his cabinet, his assent has been a

formality since the day when the principle of ministerial responsibility to Parliament became developed.

Although in England sometimes it is said that the King is God's minister on earth, and that everybody is under him and he is under nobody but God, that does not apply in practice to the English King at present any more than in early periods. There was and is no such King in England.

On the contrary there were and remain such Emperors in Japan, all Emperors in Japan are the ministers on earth of the Imperial Ancestors in Heaven, everybody is under the Emperor and the Emperor is under nobody.

The Emperor of Japan is under nobody. He is not under any person whether natural or corporate. At the same time He is not under law. Although He says in the Preamble to the Constitution, "We hereby promulgate a fundamental law of the state, to exhibit the principles, by which we are to be guided in Our conduct, and to point out to what Our descendants are forever to conform," He is not legally liable to obey the law. He is not under the law in our legal theory. Legally He is above the law.

The case is different in this point in England. There was and is a generally recognized theory that the King was and is subject to the law: Magna Carta, essentially a feudal document, exemplifies the King's subjection to the law expressed in the coronation oath which is itself older than feudalism. In the feudal state of England the relation between King and

tenants in chief was admittedly contractual, they were bound by feudal law to give him advice and he was expected to seek it.

In Japan too there existed a feudal system; but even at that time the system itself was under the Emperor and His subjects were not in contractual relations with Him. He was looked upon with reverence by His subjects, His authority being absolute, though in practice He was not sometimes free from limitation.

In England the King is under the law, and he must observe the law of the land as an officer of state. A constitutional lawyer of the present time says that the King is the chief officer of the state, instead of God's minister on earth; and another says that the crown becomes the official representative of the community, to carry out its wishes, so far as they are expressed or can be ascertained.

A political writer said, "Queen Victoria made the Crown respected, King Edward VII made it popular, it was the splendid task of King George V to make the Crown beloved. Formerly the people belonged to the Crown, to-day the Crown belongs to the People." (Edward's "Crown, People and Parliament," 1937) The author does not say anything of Edward VIII, the former King, and George VI, the reigning King. We do not know what this writer thinks of these two Kings; but his conclusion, that formerly the people belonged to the Crown, to-day the Crown belongs to the people seems to me to be true. In England it is

likely to be a real fact.

In Japan this may be partly true in a political or social sense; the people belongs to the Crown and the Crown belongs to the people. The people say on one hand that we belong to the Crown, we are living under the benevolent government of the Emperor, we shall obey His orders in everything, and shall support Him with all our might; the Emperor, on the other hand says to the people, "You are Our beloved subjects; our beloved subjects have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; we hope to maintain the prosperity of the State in concert with Our people and with their support." But in the legal sense the Crown does not belong to the people at all. In the Constitution of Japan, whether written or unwritten, the Emperor is independent in every sense of the word.

The Emperor has sovereign rights and He combines in Himself rights of sovereignty.

What Mr. Edward said of the English King applies to our Emperor with greater truth. He said, "The sovereign forms a bond of union between the legislative, the executive and the judicial. He succeeds by hereditary right; his ancestors have for centuries played a leading part in our history, and in him the continuity of British historical tradition is personified." (Edward, "Crown, People and Parliament," 1937, p. 55)

The sovereign right of the Emperor may in its exercise be divided into three parts; legislative, execu-

tive and judicial, and the method of exercising them differs according to what organ it belongs to.

The legislative power of the sovereign is to be exercised with the consent of the Diet. In order to make laws the Emperor will cause the Cabinet to make drafts of laws, or the Diet may initiate projects of law; and after the concurrence of both Houses of the Diet has been obtained thereto, the Emperor may give them His sanction, and then such drafts or projects shall become law. Thus the Emperor is the source and fountain-head of the legislative power, and legislative power is neither within the power of Parliament as it is in some countries of Europe, nor shared between the sovereign and people as it is in other countries. But as it is necessary to get the advice and consent of the Diet in order to make law, it is usual not to count the legislative power of the Emperor among His prerogatives in the narrow sense.

The executive power belongs to the sovereign. The Emperor determines the organization of the different branches of the administration, and appoints and dismisses all civil and military officers (Art. X). The Emperor establishes the offices in the different branches of the administration in accordance with the requirements of the national life. He fixes the proper organization and functions of each of them, and exercises the sovereign power of appointing men of talent for civil and military posts and of dismissing the holders of such posts.

The Emperor can do this without the advice and

consent of the Diet, and this is called by constitutional lawyers the prerogative of the sovereign. They go on to say that, when the establishment of the different offices and the creation of official positions pertain to the prerogative of the sovereign, the prerogative is necessarily accompanied by the power to give salaries and pensions. The word Prerogative is used in the same sense in the English Constitution, and lawyers say that the sovereign still possesses, as he possessed formerly, the prerogative of appointing or of dismissing any civil or military official, at his pleasure.

The judicial power belongs to the Emperor. The Emperor is the fountain of justice; this means that He is the author or originator of justice as much as its distributor. Justice is derived from the Emperor as His free gift. He is the spring and reservoir, whence right and justice are conducted by a thousand channels to every individual. The original power of judicature is vested in the Emperor, but as it would be impracticable for complete justice to be done by the Emperor Himself, He commits that power to selected magistrates who are called judges. In early days, the Emperor sat sometimes in court as a judge and took part in decisions,—but not at present. At present, justice is administered in His name by the court.

This is the meaning of the judicial prerogative of the Crown in Japan, and it differs from that in England where the King is not the author or originator of justice but only the distributor thereof.



SECTION V

THE PREROGATIVE OF THE EMPEROR

The Emperor of Japan has His prerogatives as the sovereigns of other nations have, and the name "Taiken" is given thereto by our constitutional lawyers. Taiken literally means great power, and sometimes it means the sovereign power of the Emperor, but generally it is used to designate His prerogatives. What are they? It is very difficult to define the prerogatives of the Emperor in the abstract, and also difficult to enumerate them all in concrete. Many constitutional lawyers in England accept the definition of Dicey; among them there are Chalmers and Asquith; they say that it would seem to be the most satisfactory definition. It is as follows:

The prerogatives appear to be both historically and as a matter of actual fact nothing else than the residue of arbitrary authority which at any given time is legally left in the hands of the Crown (Dicey, p. 420).

in a word, prerogative is the arbitrary authority of the Crown; and the extent of this authority differs according to the time and place, that is when and where that authority is exercised.

We have briefly dwelt upon the prerogatives of the Emperor with regard to His executive and judicial powers. If we should enumerate them according to the provisions of our written constitution, they are as follows (Art. VII-XVI):

1. Right of convoking, opening, closing, and proroguing the Imperial Diet, and of dissolving the House of Representatives
2. Right of issuing Imperial ordinances which take the place of regularly enacted laws, in case some urgent necessity demands the exercise of that right when the Imperial Diet is not sitting.
3. Right of issuing or of causing to be issued the ordinances necessary for the carrying out of the law, for the maintenance of public peace, and for the promotion of the welfare of the subjects.
4. Right of determining the organization of the different branches of the administration, the salaries of all civil and military officers, and the appointment and dismissal of the same, excepting those cases especially provided for by the Constitution or by other laws.
5. Right of taking the supreme command of the Army and Navy.
6. Right of determining the organization and peace standing of the Army and Navy.
7. Right of declaring war, making peace and concluding treaties.
8. Right of proclaiming a state of siege.
9. Right of conferring titles of nobility, rank, orders and other marks of honour.
10. Right of declaring amnesty or pardon, commutation of punishment and rehabilitation.

This is a simple enumeration of the sovereign's pre-

rogatives which are set down in the Constitution. If we go into minute details we can multiply many more, but it would be of no practical value.

In Japan, some rights of the crown over the subjects which English writers account as one of the prerogatives is not a prerogative itself, but only a corollary which flows from other great principles. They say that, when in England the rights of King and subjects conflict, the subjects' right must give way to the King's. An example may be found in the conflict where the King and a subject are joint owners, the King takes the whole; this is a privilege or a prerogative of the King. We do not count such a right of the sovereign as his special prerogative. The prerogatives of our Emperor are abundant. If an Englishman says, "The crown had greatly increased its powers during the mediaeval period, for to the personal rights of the Anglo-Saxon monarchy had been added the tenuous privileges of a feudal King. The crown had indeed the inestimable advantage of a long-established tradition and a vast reserve of hitherto undefined powers;" we should say that in Japan the powers of the Emperor or the prerogatives of the Sovereign have been accumulated through a long line of ages, from the accession of the first Emperor down to the present time.

Among the privileges enumerated above, one which ought specially to be mentioned is the treaty-making power of the Emperor.

It is the Emperor's prerogative to deal with other

nations. The Emperor is the sole representative of the nation in international dealings. It is His prerogative to make treaties, treaties of peace and friendship, of commerce and of alliance, to add territories, to recognize the status of a foreign country or of its government. The conclusion of treaties with foreign countries is the exclusive right of the Sovereign, concerning which no consent of the Diet is required. The reasons are that, in the first place, it is desirable that a monarch should manifest the unity of the sovereign power that represents the state in its intercourse with foreign powers; and in the second, that in the matter of treaty-making, promptness in forming plans according to the nature of the crisis is of paramount importance (Ito's "Commentary," on Art. XIII, p. 27). For the same reasons the declaration of war and peace is also the prerogative of the Emperor (Art. XIII).

Next comes the prerogative of the Emperor in the matter of honour. He confers titles of nobility, rank, orders and other marks of honour (Art. XV). The Emperor is the fountain of honour as well as the fountain of justice. He rewards merits, requites services, marks distinguished conduct and praiseworthy undertakings, and confers conspicuous titular distinctions; and no one is allowed to usurp or trifle with this prerogative of the Emperor.

So holy and mighty is Our Emperor in the state, yet  
He is a peer of other monarchs in international law.

Oppenheim's "International Law" has shown the repre-

sentative character of a monarch and the different treatment accorded to him in international intercourse as compared with that of the president of the republic as follows (Oppenheim, "A Treatise on International Law," 1937, p. 589):

"In every monarchy the monarch appears as the representative of the sovereignty of the state and thereby becomes sovereign himself; and this fact is recognized by international law. And the difference between the municipal laws of different states regarding this point matters in no way. Consequently, international law recognizes all monarchs as equally sovereign, although the difference between the constitutional position of monarchs is enormous, if looked upon in the light of the rules laid down by the constitutional laws of the different states. Every monarch must be treated as a peer of other monarchs, whatever difference in title and actual power there may be between them.

The author goes on to say (p. 593):

"In case the head of a state is a president, as in France and the United States of America, the president represents the state at any rate in the totality of its international relations. He is, however, not a sovereign, but a citizen, and a subject of the very state of which, as president, he is head.

"Consequently his position at home and abroad cannot be compared with that of monarchs, and international law does not empower his home state to claim for him the same, but only similar consideration as that due to a monarch. Neither at home nor abroad, therefore, does the president of a republic appear as a peer of monarchs."

Among many prerogatives of the Emperor we will explain two important ones, that is, the military pre-

rogative and that of conferring marks of honour.

### 1. MILITARY PREROGATIVE OF THE EMPEROR

The Emperor determines the organization and peace standing of the army and navy; that is, to say the organization and peace standing of the army and navy are to be determined by the Emperor (Art. XII). This is the exercise of the sovereign power of the Emperor, and no interference in it by the Diet may be allowed. The determining of the peace standing includes the determination of the number of men to be recruited each year, and embraces also the organization of military divisions, and of fleets, and all matters relating to military districts and sub-districts, to the education of military and naval men, to inspections, to discipline, to fortification, to naval defences, to naval ports, to preparations for military expeditions.

The Emperor regulates the internal organization of the army and navy, and increases or diminishes their number. He is also solely entitled to erect forts and other places of strength.

The utmost importance is attached by the army and navy to the fact that they are directly under the control of the Emperor and are free from interference by the civil government. This status called by military leaders the independence of the army and navy comes from the constitutional provision stating that the Emperor has the command over the army and navy. This independence of all possible interference

on the part of the civil government is believed to be indispensable for the efficient functioning of the army and navy as the defence of the Empire. The right of command over the army and navy is composed of the right to marshal them and the right to formulate strategy. Military leaders believe that the right to formulate strategy implies the right to determine the amount of forces necessary for national defence; but we think that it is better simply to cite the constitutional provision that the Emperor determines the organization and peace standing of the army and navy (Art. XII)

The independence of the army and navy of the civil government implies that the General Staffs are directly responsible to the Throne and thus independent of the interference of the civil government. The military minister, whether of the army or of the navy, has the right to make an appeal to the Throne regarding military affairs, direct instead of through the cabinet.

Some civil officers and constitutional lawyers have doubts as to this interpretation of the constitutional provisions, and others are against it. The question was often discussed in Japan, especially at the time of the London Conference on naval limitation, 1930. But this interpretation of total independence gained over the opposite one, and no plan of reducing military forces proposed by the civil government would succeed unless it was agreed to by the General Staff of the army or the navy as the case may be.

As will be seen from this statement, the military prerogative of the Emperor includes both the Army and the Navy, and there is no difference between the two forces; the Constitution says always "The army and navy," not "The army and the navy": both are treated in the same way in our Constitution and not in different ways as in the English or American Constitution.

In England the royal prerogative operates in regard to the navy more fully than it does in regard to the army. The Bill of Rights, 1688, prohibits the maintenance of a standing army in time of peace, without the consent of Parliament, which prohibition extends to all forces of the crown serving on land. Therefore, the army, air force, and to some extent the marines require an annual Act of Parliament legalising their existence; that is to say the army is kept in being by annual legislation and the Army Act permits the trial of military offences by Court-martial, according to Articles framed by the King. On the contrary, the Navy is not maintained by annual legislation but is a standing and so-called prerogative force.

In England, again, the methods of recruiting between two forces differ from each other. Although the King, in case of a sudden invasion, has a right to demand the personal service of every man able to bear arms, and the tie of allegiance binds the subject to comply with this demand, he cannot in time of peace compel landsmen to enter the Army. On the other



hand seamen and sea-faring men may even in time of peace be compelled by the crown to enter the navy by what is known as impressment, although this prerogative is only exercisable over individuals who have voluntarily chosen a seafaring life and does not extend to landsmen or fishermen except in certain cases.

There is no such difference in Japan between the army and navy. Japanese subjects are amenable to service equally in the two forces, and they serve according to the provisions of law.

Such differences of military prerogatives between the sovereigns of Japan and England flow from the differences of the history and traditions of the two nations through long ages.

The Emperor declares war. The declaration of war and the conclusion of peace are the exclusive right of the Sovereign; concerning them no consent of the Diet is required (Art. XIII). This is the same in principle in England, but not in detail, and the interpretation given by English authors does not apply to us. They say that, as representative of his people and as an executive magistrate, the King possesses the executive right to make war or peace, and the law of the constitution leaves it to the King's discretion to grant or refuse a capitulation or truce to an enemy. But we do not think that our Emperor possesses the right to make war as representative of His people; we believe that the Emperor has a right of His own to make war or peace. Such is our constitutional principle.

In Japan, as in many other nations, the Emperor has the supreme command of the Army and Navy. This is one of the great principles embodied in the Constitution of Japan, and is looked upon by military men as the most important of all.

Historically speaking, the great Imperial Ancestor Jimmu Tenno founded this empire by his divine valour, in personal command of his army composed of several divisions. Thenceforward all succeeding Emperors have taken the field in person in command of their armies, in cases of emergency that have arisen either in external or internal affairs. On various occasions the Imperial son or grandson was sent to assume command of the army on behalf of the Emperor. Afterwards, great reforms were introduced in the military system, and a Commander-in-chief was appointed from among the subjects whenever a large imperial army was led to the field, and on each occasion that the Commander-in-chief took the field, the Emperor used to bestow upon him a sword of discipline, with which he had to enforce strict discipline in his army. But even at that time, all military authority and command were in the hands of the sovereign. Then followed the long period of the Shōguns of the feudal system, and during that time the military power of the country was usurped by the military classes.

For about seven centuries (1186-1867; Minamoto, Ashikaga, Tokugawa periods) the administration of the nation was carried out by successive military

leaders known as "Shōgun." But this military government came to an end when the Tokugawa Shōgun was forced to surrender the administrative power to the Imperial Court. On the restoration, 1868, the Emperor again assumed personal military command, and a General Staff Office was established for His Imperial Majesty's personal and general direction of the army and navy.

Though we say that the Emperor assumes personal military command, it is not meant of course that He always commands or orders military men in person, at every time and in every matter, but He does it through many channels, just the same as in the executive and judicial affairs. Although we say that the Emperor declares war, He does not himself declare war, but in practice the cabinet does that. The cabinet exercises the powers which are invested in the Crown by the constitution, viz. the issuing of administrative and emergency ordinances, the making of treaties with foreign nations, the declaration of war and peace.

The exercise of the right of command in the field may be entrusted to the commanding officer of the place, who is allowed to take the actual steps his discretion dictates, and then to report to the government. This is to be regarded as a delegation of the sovereign power of the Emperor to a general in command of an army in order to meet the stress of emergencies, according to the provisions of the law (Notification No. 36 issued in the 15th year of Meiji).

It is thus a fundamental idea in Japan that the Emperor is the supreme commander of the army and navy and that all soldiers and sailors are His direct

subordinates. The Emperor regards all subjects as His children, but soldiers and sailors are regarded as His special children. This idea is expressed in all Imperial rescripts granted to the army and navy. When the first Emperor Jimmu made his eastern expedition, at the end of which he founded the Japanese throne in 660 B.C. he was really the supreme commander-in-chief of the expeditionary forces. Since that remote past, the right to command the military forces has been one of the Emperor's prerogatives.

The military men of Japan are faithful to the Emperor and obey His orders immediately. At the time of the uprising of February 26, 1936, when the Lord Privy Seal (a former Prime Minister), the Minister of Finance also a former Prime Minister, a general and other high officials were assassinated in a revolt, the revolted soldiers surrendered at once on hearing the announcement of the Emperor's order.

That Imperial order was made known through the instruction by radio of the commander of the martial law headquarters, issued Saturday morning (29th), as follows:—

INSTRUCTION TO THE SOLDIERS WHO PARTICIPATED  
IN THE TOKYO DISTURBANCE

“To you all, soldiers:

The Imperial orders have been announced. The August wishes of His Imperial Majesty the Emperor have been issued. You are believed to have acted with the utmost sincerity in absolute obedience to

your seniors, but His Majesty has graciously ordered you all to return to your barracks. If you continue to resist, it will mean that you are opposing the Imperial orders and will have to be stigmatized as rebels.

You must all have acted in the belief that you were doing right, but if you now realize that what you have been doing was wrong, it would be advisable for all of you not to persist in an antagonistic attitude, clinging to past circumstances or ties of obligation, thereby losing honour forever by having run counter to the orders of His Majesty. Even now, it is not too late for you all to surrender. Cease your resistance at once and return to your regimental colours. By so doing, you will be pardoned for what you have done. That you do this is wished heartily by the entire nation, not to mention your parents and brothers. Leave your present positions immediately and go back to your barracks."

It is different in England. There it is said that, as incident to the prerogative of declaring war the King has assigned to him the management of war, and that as head of the army and navy he can order their movements; but at present some critics say that the King is not the supreme military authority. In early times the King was the supreme military authority, and the Commander-in-chief was responsible to the King alone, and his office, to which the sovereign attached great importance, was often held by a royal prince irrespective of his suitability for

the post; but this has changed. Queen Victoria held that through the Commander-in-chief the crown exercised authority over the army, independent both of her ministers and of parliament; she protested strongly against the new arrangement which made not the crown but a minister of state who was answerable to parliament, the supreme military authority, but she protested in vain, and at present the sovereign is not the supreme military authority. Such is the statement of an English author.

In Japan the people think without the least doubt that it is a matter of course for the Emperor to have all military powers. They believe that this is necessary for the welfare of the people and for the peace and happiness of the country at large. Here, things military are all concentrated in the person of the Emperor, as stated above. He has the supreme command of the army and navy; He determines the organization and peace standing of the army and navy; He declares war and makes peace; and He proclaims the state of siege.

In many countries the rights and powers relating to military affairs are divided into many parts, and each is vested in a particular organ. For instance, in the United States, the right of organization of the army and navy is in the hands of Congress, while the President is their Commander-in-chief. The reason why they divide the military power into many parts to be held each by a different organ is because of the fear that the power might be abused if the whole of

it were vested in one person. But in Japan no one conceives the idea that the Emperor could abuse His military power; and the fact is that He has never abused his military power.

Then there is no state, except Japan, in the world where the supreme military authority is in the hands of one man who has no responsibility whatever for the exercise of that authority. This theory and practice is the greatest, if not the sole, cause of the strength of our military force.

## 2. THE PREROGATIVE TO CONFER MARKS OF HONOUR

The Emperor confers the tiles of nobility. Historically speaking, there was no nobility in ancient Japan; but having been established in imitation of the Chinese institution and continued for a long time, it was almost wholly abolished at the time of the Restoration in 1868, when all things were reformed together with the feudal system, the remnant of old nobility being grouped together under the single category of "Kwazoku" which means nobility. But subsequently bureaucracy took measures to restore the time-honoured nobility in some form; and in 1885, when a cabinet was instituted and the privy council established, a peerage system was introduced, dividing "Kwazoku" into several ranks. These are an adoption of the old Chinese ranks of nobility made to correspond to the ranks of the European peerage.

There are five ranks of nobility, the highest of

which is that of prince. We do not call the holder of the highest title duke as is the case in England but call him prince; the second is marquis; the third count, not earl; the fourth viscount; and the fifth is baron.

The titles are hereditary like those of England descending to the eldest son, though in default of any real heir an adopted son may inherit them.

At first a large majority of peers were those who were feudal lords before the Restoration and also the direct retainers of the Emperor; but many new peers have since been created in recognition of their distinguished services to the state, and their number is ever so increasing as to perhaps outnumber the nobility of old lineage.

General Nogi and Admiral Togo were created counts, and many other soldiers and sailors were honoured with some titles of peerage on account of their service in the Japan-China and Japan-Russia wars. Prince Ito and Prince Yamagata were originally plain Mr. Ito and Mr. Yamagata; afterwards they were elevated to the peerage and successively raised in rank in appreciation of their great work during these wars and other works. Many graduates of the Imperial University of Tokyo have been made members of the nobility; for instance Mr. Shidehara, formerly the head of the Department of Foreign Affairs and Mr. Ishii, ex-ambassador once accredited to the United States and France have been made nobles, the former baron and the latter viscount, both



in recognition of their diplomatic services. So was the late Dr. Yamakawa, president of the Tokyo Imperial University made baron for his work in the cause of education. Thus it seems that the peerage is the final goal of successful administrators and officers of the army and navy.

Notwithstanding it seems that peerage is the final goal of successful administrators, and army and navy officers, Japanese nobility is almost a nominal affair, enjoying only a few privileges. Peerage is not so much a starting point for securing important positions of the state in Japan. The Japanese people entertain only a vague or a little respect for the nobility, not because there are more titled persons in Japan than in other countries\* but because the people, especially the educated classes, think that personal merit is to be valued more than birth which is only accidental.

At present we find among our educated classes persons who insist on the abolition of the peerage system altogether. Some professors of the Imperial Universities have published their opinions to this effect. We find men holding similar views even among noblemen themselves; some of them carried the idea into effect, returning their titles of nobility practically though not legally, e.g. Count Nogi, Count Itagaki and others.

There may be many reasons for the abolition of the peerage system, one of them being that there is nothing to be gained by keeping such a system in existence which entitles its holder to neither privilege

nor distinction; another is that it is quite idiotic to retain such a senseless institution in a civilized country like Japan. Another reason set forth against the peerage system is influential. It is that the existence of the peerage militates against the principle of equality, and is opposed to the welfare of the people at large; there should not be distinction between man and man, dividing the subjects of one and the same Emperor into several classes. They say that since we are equally subjects of the Emperor, equally serve in the defense of the country, and all contribute to the common coffer whereby the country is supported, why should we bow before the nobility, which is after all an artificial thing and which does nothing especially good to society.

The present writer himself does not think that the peerage system of Japan shall be abolished as some think or desire; but we shall not disregard the fact that the abolitionist party has some influence.

The Emperor confers Orders and Ranks.

Orders are given to any persons including foreigners who are worthy of honour. Saving the exceptional ones, there are four kinds of orders. One of them is the order of the Golden Kite, which is a military order corresponding to England's Victoria Cross. Another is the order of Paulownia granted to women. The remaining two kinds are most common and are granted to civil as well as military officers, common people, foreigners and women; they are as follows:

(a) The order of the Rising Sun, an honour much

prized by all; •

- (b) The order of the Sacred Treasure, given largely to officers for services to the state, corresponding to the order of the Bath or the order of St. Michael and St. George in England.

Each of these four kinds of order is classified into several ranks, corresponding to the English ranks of Companion, Knight Commander, and Grand Cross, though with us the grading is more simple, the ranks being called the first, the second, the third class, etc., down to the eighth class. As illustration, Prince Konoye, the Prime Minister is decorated with the first class of the order of the Rising Sun, and Dr. Matsu-nami, the author of this book with the second class of the order of the Sacred Treasure.

These decorations we keep and look upon with due respect as marks of honour conferred by the Emperor.

In addition to those distinctions in the gift of the Emperor, there is, in Japan, what is very rarely met with elsewhere, although it was of Chinese origin; that is, a gradation called and pronounced "Yi".

"Yi" is a series of ranks given to all high government officials and nobility and also to other deserving individuals. Many prominent merchants, learned men, and men of public services have been given one grade or another of these court ranks. "Yi" is not conferred on foreigners, the subjects only being eligible to the honour.

Court rank "Yi" is practically divided into eight grades, legally there being nine; and each grade is

subdivided into the senior and junior classes. The first of these grades is not as a rule conferred on a living person; even Prince Saionji who is the only living Genro at present and who stands the highest in the order of court precedence, next to the imperial princes has the rank of senior second grade. Prince Konoye the Prime Minister has the second grade, so also Dr. Matsunami, the author of this book, while many former Ministers of the state have the senior or junior third grade; that of the fourth or fifth grade being generally conferred on vice-ministers and prefectural governors. The senior or junior third grade is conferred on full generals or full admirals while that of the senior or junior fourth is conferred on lieutenant-generals or vice-admirals.

## CHAPTER IX

### THE SUBJECTS OF JAPAN

The Constitution of Japan which begins by declaring that Japan is reigned over and governed by a line of Emperors unbroken for ages eternal, and makes provisions regarding the Emperor in the first chapter immediately proceeds to make provisions regarding the subjects in the next chapter. In a monarchy we call people subjects, but not citizens, citoyens or Staatsbürger. This is the case in Japan as it is in England.

Before stating the rights and duties of the subjects in detail we shall deal with the Japanese subjects as a whole, beginning with their relations with their Heavenly Lord, the Emperor, in order to show why our people are so loyal and obedient to the Emperor.

Ito uses the words "subject" and "citizen" synonymously in his "Commentaries." Quigley referring to this says that the Constitution prescribes the rights and duties of the subjects (*shinmin*). (Quigley's "Japanese Government and Politics," 1932, p. 49)

#### SECTION I

#### THE RELATION BETWEEN THE EMPEROR AND THE SUBJECTS

Our people consider that they all form one vast family with the Imperial House as its head. They consider that all Japanese subjects are members of

houses which stand towards one another in the relation of branches of the Imperial House. It is for this reason that the term "great house" in Japan means "public" or "government"; "the Imperial Court" and "the Emperor" had and have also the same meaning. The Emperor is the sole head of the vast family and he is sacred.

Well, he is sacred and inviolable; he combines in himself all rights of sovereignty; but the Emperor is not an absolute despotic monarch. The Constitution provides that the Emperor exercises the rights of sovereignty according to the provisions of the Constitution, and that he exercises the legislative power, not at his own will but with the consent of the Imperial Diet. In the preamble of the Constitution it is said in effect, that the Emperor shall not in future fail to wield the rights of sovereignty in accordance with the provisions of the Constitution. His Majesty says himself: "We now declare to respect and protect the security of the rights and of the property of our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law."

That the Japanese Emperor is not and should not be despotic can again be seen from the Emperor Meiji's oath at the Sanctuary of the Imperial Palace. There he said that he established the fundamental laws, which were formulated into express provisions of law, so that his subjects shall thereby be ensured

a wider scope of action in giving the Emperor their support, and that the observance of the laws shall continue to the remotest ages of time. That is to say, the Emperor formulated the fundamental laws in order to enable his subjects to enjoy a wider range of action. There His Majesty also said that he would thereby give greater firmness to the stability of the country and promote the welfare of the people. He swore to observe the laws himself; he made to his Imperial Ancestors a solemn oath never in his time nor in the future to fail to be an example to his subjects in the observance of the Constitution.

In ruling over the country the Emperor does not mean to make himself an absolute ruler, arbitrary in conduct. He does not like to be left alone quite separated from the people. He requests the cooperation of his subjects in his hope of making manifest the glory of the country. He hopes that the subjects will give him help and support as, in former times, their forefathers gave them to the Imperial Ancestors. In the Promulgation Speech the Emperor says, "The Imperial Founder of Our House and Our other Imperial Ancestors, by the help and support of the forefathers of Our subjects laid the foundation of Our Empire." He says further, "We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavours, and that harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country." Again His Majesty repeated the same

sort of expression in the preamble of the Constitution. There he says, "Desiring to promote the welfare of, and give development to the moral and intellectual faculties of Our beloved subjects,... and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate... a fundamental law of State to exhibit the principles by which we are guided in Our conduct."

Be it noted that the Imperial Oath, the Imperial Speech, and the Preamble of the Constitution were issued on the same day on which our Constitution was promulgated, i.e., the 11th of February, 1889. But there were forerunners of these expressions which show the Imperial will to respect public opinion and hope for the cooperation of the subjects in carrying out the plan of government.

On the Restoration of the personal Imperial rule, in 1868, the first act of the Emperor Meiji on ascending the throne was to enumerate fundamental principles of his government in the form of a solemn oath which has since been known as "The Five Articles of the Imperial Oath." It was declared on the 14th of March of that year:

1. Deliberative assemblies shall be established and all measures of government shall be decided by public opinion;
2. All classes, high and low, shall unite in vigorously carrying out the plan of government;
3. Officers, civil and military, and all common



people shall, as far as possible, be allowed to fulfil their just desires, so that there may not be any discontent among them;

4. Uncivilized customs of former times shall be broken through, and everything shall be based upon the just and equitable principles of nature;
5. Knowledge shall be sought for throughout the world, so that the welfare of the empire may be promoted.

In this Oath we find some idea of democracy in a certain sense. It says that all measures of government shall be decided by public opinion, that all classes, high and low, shall unite in carrying out the plan of government, and that all common people shall be allowed to fulfil their just desires. The Emperor desires that everything shall be based not upon force or power, but upon the just and equitable principles of nature. The object of getting knowledge, which he desires shall be sought for throughout the world, is for the promotion of the welfare of the Empire.

Such being the relation between the Emperor and his subjects how can the former become a despotic ruler and the latter a disloyal people? Their relation is not only that of the ruler and the ruled, the governing and the governed, but also that of the chief of the great house and members of the branch houses. We Japanese people call the Emperor father and the Empress mother, and they in turn call the people

their beloved children.

To know these relations between the Emperor and his subjects is to get the key for disclosing what might seem to foreigners a mystery in Japanese politics. Mr. Putman Weale, who says in his book, "The short-sightedness of Japanese policy has been the ally of republicanism in the Far East, sponsor of Western influence, and the enemy of the peace and dignity of the Japanese Imperial House, which today is swaying ominously under the high winds of democratic revolt, and may yet encounter a terrible end," misunderstands Japanese history, her constitution and her people; really he does not know Japanese nationality as a whole. We can safely say that Imperial Japan will continue as a glorious Empire to eternity; her existence will be coeval with heaven and earth.

Further on we shall show historically how our forefathers were beloved by our Imperial Ancestors just as we are by our Emperor at present. The essential feature of the policy of the Imperial Ancestors was, that they loved and cherished their subjects, who were accordingly called by them "the great treasure." It has been the custom of our successive Emperors to assemble, on the day of their coronation, their relatives and the people of the country, and to address them in this wise: "Imperial Princes, Princes, Ministers, Our different functionaries, and the public treasure of the country here assembled." That there have been instances of the people calling themselves

the Emperor's treasure, may be seen from the following poem composed by some unknown author:—  
“Happy are we, His Majesty's treasure, to have an ample recompense for our earthly existence, in having been born at an epoch so full of prosperity and glory.”

It will thus be observed that, on the one hand, the Emperors have made it their care to show love and affection to the people, treating them as the treasure of the country, while on the other hand the people have ever been loyal to their sovereign, and have considered themselves as happy and blessed. Such is in short what is apparent from the study of ancient documents and of the customs of the land. (Ito's “Commentaries,” p. 35). It is due to this very cause that the good relation subsists between the Emperor and his subjects. Although under the military régime of the Middle Ages, the expression “public treasure” lost its meaning, yet since the Meiji Restoration all the Japanese subjects without discrimination have been able to enjoy their rights and discharge their duties, and thus the expression “public treasure” has regained its meaning.

## SECTION II

### EMPEROR-WORSHIP

#### 1 Emperor-Worship in Japan

The Japanese subjects worship their Emperor. To them His person is sacred and His decisions are

looked upon as actually coming from Heaven, whose offspring He is believed to be. The Son of Heaven is the designation given Him by the subjects of Japan. Our respect and love of the Emperor are preserved intact through the centuries. We teach at the elementary schools the children six years old that there exists no more beautiful country than Japan, that it is the land of gods, of whom the Emperor is the son, and that one must die for the Emperor and the country. These principles inculcated in a race that is combative, expressly proud and courageous, have produced a nation essentially brave and strong. Not only do we love and respect our Emperor but we worship and look upon Him with adoration. An Imperial procession in Japan has special peculiarities. To sit on the floor before a superior is more respectful than to stand. Hence, when His Majesty passes through the streets the windows of all upper storeys are shut. Even a doorstep is an improper elevation, and tens of thousands of the Emperor's loyal subjects sit down on their heels in respectful silence on the matting which is spread on the road, and bow their heads, hardly daring to look when the Emperor passes on; it is just as the Christians do before God or the Holy Virgin. This custom is the same throughout the country, even in Tokyo where the Emperor passes along the streets very often, the old adoration of the Emperor by the subjects undergoes no change at all.

Emperor-worship in Japan produces many effects. Hershey treats it as one of the causes of the retarda-

tion or comparative failure of the Christian movement in Japan. He says, "The causes are many and various. They are probably to be found primarily in the characteristics and the institutions of the Japanese people rather than in any lack of devotion or wrong method of propaganda on the part of the missionaries. In the first place, the Japanese are extremely patriotic—not to say chauvinistic—the soul of Japan 'The Yamato Damashi' still beats strongly in the Japanese breast. Rooted in ancestor and Mikado worship and wedded to old and hallowed customs, this old Japan spirit is instinctively hostile to things foreign, more particularly to those of a religious nature."

Emperor-worship among the Japanese makes some of the intelligent people in Japan declare as follows, although my opinion is not necessarily in full accord therewith:

"To observe the world's peace and promote the welfare of mankind is the mission of the Imperial family of Japan. Heaven has invested the Imperial family with all the necessary qualifications to fulfil this mission. He who can fulfil this mission is a being who is the object of humanity's admiration and adoration and who holds the prerogative of administration forever. The Imperial family of Japan is worthy of respect as God and as the embodiment of benevolence and justice. The great principle of the Imperial family is to make the popular interest

paramount.

“The Imperial family of Japan is the parent not only of her own ten millions, but of all mankind on earth. In the eyes of the Imperial family all races are one and the same; it is above racial considerations.”

They say further, that the League of Nations, which proposed to save mankind from the horrors of war, can only attain its real objects by placing our Imperial family at its head.

Westerners would treat this statement, perhaps, with ridicule; and although the present author himself thinks that there are many mistakes therein, still it shows how the doctrine of Emperor-worship makes its way in Japan. Our people take the Emperor's voice as that of God. We shall give an example of this.

At the time of the Russo-Japanese War, the Emperor Meiji upon receiving the news of the great victory in the battle of the Japan Sea, was pleased to send the following telegraphic message to Admiral Togo and the combined fleet under him:

Meeting the approaching hostile fleet in the Korean Straits and fighting bravely for days, Our Combined Fleet has achieved an unprecedented success by annihilating the enemy's fleet. We are pleased that by your loyalty and bravery, We have thus been enabled to answer to the spirits of Our Ancestors.

On the receipt of this Imperial message, all the

officers and men under Admiral Togo were unable to utter a word, tears flowed down their sunburnt cheeks in the fullness of their struggling emotions, as the sturdy Admiral read out the Imperial message, for "We have thus been enabled to answer to the spirits of Our Ancestors" are no common words, and there has seldom, if ever, been occasion for these words to leave the Imperial lips.

We look upon our Emperor as almighty just as Western Christians look upon their God. We find many constitutions in the world, the preamble of which refers to God; we find them in new constitutions as well as in old ones. In the Irish constitution of 1937, one of the newest constitutions, we find the following:

In the name of the Most Holy Trinity, from whom is all authority and to whom, as our final end, all actions both of men and State must be referred,

we, the people of Eire, . . .

Humbly acknowledging all our obligations to our Divine Lord,

Jesus Christ, who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our nation. . .

Do hereby adopt, enact, and give to ourselves this Constitution.

We do not know how holy is the God that Christians

know, any more than Western Christians know how holy is the Tenno (the Emperor of Japan) to us, but they and we worship Him respectively as their or as our holy entity.

As our people consider the Emperor's words as those of God, the famous Imperial Rescript on Education which may be said to form the basis of Japanese education, at least in its moral and social aspects, is taken by the people as a sort of Japanese Bible. On the 30th of October 1890, Meiji Tenno summoned the prime minister and the minister of education, and delivered to them the Imperial Rescript on Education. The next day the minister of education caused a copy of the Rescript to be sent to every school in the Empire with instructions that those engaged in the work of education should bear constantly in mind the spirit of this Imperial Rescript in the discharge of their duties. Now a copy is kept in a separate place in every educational institution from universities to primary schools, and it is read and explained to the pupils on ceremonial and other suitable occasions, and every pupil knows it by heart and recites it. Thus it will be seen that the Imperial Rescript in a very real sense forms the basis of the education of the Japanese nation, and must necessarily influence tremendously the national educational and ethical outlook of the entire people. The two cardinal virtues which are emphasized in this Rescript are loyalty to the Emperor, which includes patriotism to the country and filial piety.



The Imperial Rescript reads as follows (official translation) :

Know ye, Our subjects,

Our Imperial Ancestors have founded Our Empire on a basis broad and everlasting, and have deeply and firmly implanted virtue; Our subjects ever united in loyalty and filial piety have from generation to generation illustrated the beauty thereof. This is the glory of fundamental character of Our Empire, and herein also lies the source of Our education. Ye, Our subjects, be filial to your parents, affectionate to your brothers and sisters; as husbands and wives be harmonious, as friends true; your benevolence to all; pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers; furthermore, advance public good and promote common interests; always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial throne coeval with heaven and earth. So shall ye not only be Our good and faithful subjects, but render illustrious the best tradition of your forefathers.

The way here set forth is indeed the teaching bequeathed by Our Imperial Ancestors, to be observed alike by Their Descendants and the subjects, infallible for ages, and true in all its

phases. It is Our wish to lay it to heart in all reverence, in common with you, Our subjects that we may all attain to the same virtue.

We worship our Emperor's image, and keep it holy with greater care than American people do their constitutional documents. In the United States of America, after the new government came into operation, many records, which evidently included both the Declaration of Independence and the Constitution, were turned over to President Washington, and in accordance with the act of September 15, 1789, put into the custody of the Department of State. The original Declaration was exhibited many years until light and air threatened its destruction; but the constitution was not. On September 29, 1921, both documents were transferred to the Library of the Congress. A special shrine was prepared for them in which they have been on view since February 28, 1924, but under conditions that prevent deterioration.

The history of the Emperor of Japan has much in common with that of the King of Great Britain, but in his relations with the nobles and people they differ from each other. Bluntschli remarks, "In no other European country did the monarchy retain so much power in the Middle Ages as in England, but nowhere were the rights and liberties of the nobles and people so courageously defended and securely founded." In Japan the real power of government was sometimes usurped by nobles and military; Emperors were at times exiled to distant islands by rebellious military

leaders, but there were no such conflicts between the Emperors and nobles or people, as we see in English history.

Clokie remarks in his "Origin of Constitutional Government," that "it may be something of an exaggeration to say that England differed from other countries in possessing as a distinctive this doctrine of fundamental rights; but at least it is true that in every case of open conflict between the King and nation, or what may stand for it, from 1215 to 1689, this is the underlying assumption of those who oppose the King—that they can force him to respect ancient and formerly recognized rights." In Japan, there have often been usurpations by the nobles of the Emperor's sovereign right, and there was the institution of the Shogunate by which military leaders exercised the real sovereignty of the Empire; but there was no conflict between the Emperor and nobles or people, by which the former was forced to respect any ancient or formerly recognized rights of the latter.

## 2 State-Worship in Italy

Our Emperor-worship has something in common with Fascism. There are many ways of representing Fascism. One of them is: big business declares for a strong government, attained by discrediting or even abolishing the legislative branch of the state. Power thus is concentrated in the hands of the executive who hold it in agreement with finance, capital

and the army, and we have that form of government known as Fascism. Again Fascism may be described as the cult of State-worship, which visualizes the invisible State as ultimate reality and demands the sacrifice of all individual and group interests at its altar. The foundation of Fascist doctrine, it is said, is the conception of the State,—of its essence, tasks and purposes. For Fascism, the State is absolute, in relation to which all individuals and groups are relative.

This is the fundamental departure of Fascism from democracy and socialism: from democracy, which emphasizes the right of the majority against the state, viewed as a human institution, the servant of its citizens; from socialism, which imposes a variety of functions upon the state during a period of transition, but which envisages the ultimate destruction of the state.

Thus, Emperor-worship and State-worship have much in common; but in spite of Fascism's being state-worship ours is Emperor-worship; the state is invisible, but the Emperor is, in a sense, visible, the state is a human institution, but our Emperor is superhuman existing before human history began. Therefore such a question as "How can the invisible state which cannot exist without individuals, and which is created by and for human beings, be said to be an institution superior to the human will?" does not occur in the case of our Emperor-worship. With us the existence of the Divine Emperor is

natural, we believe in it and no more. The very existence and the holiness of the Emperor are beyond question in Japan as the existence and the holiness of God are beyond question with Christians. Fascism too has something in common with our Emperor-worship, for Fascists hold that even if the existence of the state can not be proved by any scientific test, the idea which it represents is real and vivid; the state lives because its subjects feel it, and the sentiment is a propelling motive of human action.

This is true throughout all nations of the world, which insist on the patriotism of their people towards the state. Democrats who disagree with the view that citizens should live to serve the state and owe the state unquestioning allegiance and complete obligation, insist on the patriotism of citizens; patriotism, nevertheless, is to serve the state and sacrifice their own lives in case of necessity.

Thus we find something in common between our Emperor-worship and the Italian State-worship; but if it were true that Mussolini is said to have remarked, "The Fascist state is a will to power and domination, moral life itself, and its possible foundations are locked out. The will to power and domination has nothing in common with morality even if this serves the vital needs of a people," then our doctrine is far different from Fascism. Our doctrine has a principle of peace both within and without the country, we have in view the moral life of the nation and its possible foundation; we consider that the will to

power and morality are compatible and may be reconciled.

Rossi in his "The Rise of Italian Fascism" says:

"Whenever Fascism is established the most important consequence is the elimination of the people from all share in political activity. Constitutional reform, the suppression of Parliament and the totalist character of the régime cannot be judged by themselves, but only in relation to their aims and their results. Fascism is not merely the substitution of one political régime for another; it is the disappearance of political life itself, since this becomes a state function, and monopoly. Political doctrines circulate, are abandoned or modified, but the people have nothing to do with their adoption or their functions. Even if a party continues to exist, it is a mere instrument, a subordinate branch of the state."

We do not in Japan eliminate the people from a share in political activity. In cases of the suppression of Parliament and other political institutions we judge not only by the questions themselves but rather in relation to their aims, and there is no disappearance of political life in our nation. The Emperor is absolute, He is everything, and individuals and groups are only relative, yet the political life of the nation remains and has its value.

We always preach duty, self-denial and discipline, and condemn individual egoism as Fascism does, but

it is our way not to sacrifice the attributes of individuality, the individual's being as a conscious being, not to remove from the institutions of the people all freedom and independence nor to reduce the people to malleable raw material as they are said to become in consequence of Fascism.

### 3 State-Worship in Germany

In Germany the cult of State-worship is predominant as Fascism prevails in Italy. To the Germans, the state is something much more than a mere agent of the people for the protection and promotion of their common or collective interests. It is looked upon as an entity having interests, ambitions and a will of its own quite distinct from those of its citizens collectively considered. The interest of the state is superior to those of its citizens. To this entity the citizens are held to owe implicit obedience. Whenever the interests of the state and of its citizens come into conflict, those of the latter are to give way. Being superhuman, the state is not bound by the principles of morality as in the case of individual human beings. Furthermore, the state is not only justified, but it is under an obligation to use its utmost powers to advance its particular interests, no matter how much in so doing the interests of its own citizens, individually viewed, may suffer.

This conception of the state is said to be the one held in Germany not merely by the relatively few ambitious men at the helm of government, but by

all the people. It permeates all German philosophy. It has been taught in the schools and universities until it has become an essential part of the unconscious beliefs of the people as a mass.

For them, the state is absolute. The state can set up governments, monarchical, aristocratic or democratic, president, cabinet, prime minister, and can dissolve them all at any time, and in no case has the will of the state been less binding than in another. German people say that they can conceive of a state issuing laws that are wrong, but they cannot conceive of a state issuing commands that are illegal

Some writers have contended that there are legal restrictions on the state; that it has no authority to transcend these limitations; however, it is difficult to imagine a condition in which any particular law could not be made legally binding upon a people. We can go further by assuming a ridiculous case in which a state decrees that all its citizens should commit suicide. Of course this action on the part of the state would be ridiculous. Yet a state may command that a man go to war and into a firing sector where he is certain to be killed, and presumably an authority that can legally require a part of the population to place themselves where they will be shot has a legal power the same with the rest. Of course, a state may issue such unjust laws as to forfeit all moral claim to obedience; there is a moral right of revolution; but revolution is illegal by its very nature (West, p. 4). Such is the state-worship in Germany



SECTION III

DIVINE STATE

1 The Divine State of Japan

The people of Japan call their state the divine state. In "Jimmō Shōtōki" (The Book of Correct Genealogy of the Divine Empire, A.D. 1343) the author observes:

"Great Yamato (Japan) is a divine country.

It is only our land whose foundations were first laid by a divine ancestress. It alone has been transmitted by the Sun-Goddess to a long line of her descendants. There is nothing of this kind in foreign countries. Therefore it is called the divine land. It is only our country which from the time when heaven and earth were first unfolded has preserved the succession to the throne intact in a single family. Even when, as sometimes naturally happened, it descended to a lateral branch, it was held according to just principles. This shows that the oath of the goddess to preserve the succession is ever renewed in a way which distinguishes Japan from all other countries."

The author goes on to say:

"It is the duty of every man born on the Imperial soil to yield devoted loyalty to his sovereign, even to the sacrifice of his own life. Let no one suppose for a moment that there is any credit due to him for doing so. Those who are in an inferior position should not enter into

rivalry with them. Still more should those who have done no specially meritorious service abstain from inordinate ambitions, . . . Such is the clear instruction vouchsafed to us by the Sun-Goddess."

These views of the author of "Shōtōki" did not produce any widespread influence on public opinion at the time of their enunciation, men being too much engrossed with fighting at that time to listen to any academical statement. But the "Shōtōki" was destined to produce great and lasting effects in future ages, and the patriotic people keep at present this work as their Bible.

"Jinnō Shōtōki" was written by Kitabatake Chikafusa (1340-1343) and is a work designed to establish the legitimate divine claim of the sovereign of the Southern Court, at the time when there was going on the dynastic war between the Southern and the Northern Courts in Japan.

The Japanese sense of the Divine State is peculiar to our people and there is nothing of this sort in foreign countries, East and West. Although Murdoch says, that Japan differed from less favoured outside barbarian realms in that her origin alone was divine, our country differs in this point, from every nation that exists at present, less favoured or more favoured, barbarian or civilized, Western or Eastern. As the author of "Jinnō Shōtōki" pointed out centuries ago, it is only our land whose foundations were first laid by a divine ancestress, and was and is the divine state as shown above. I do not say that a divine state has never existed in the world's history, but it seems that

divine states in the same sense as that of our country, or even in a similar sense, do not exist at present.

Japan is such a divine state; therefore with us, if we are asked how it comes about that the ruler not only claims himself to be the source of all authority, but also that this claim is acquiesced in by the people ruled, the answer must be found in the belief, long held unquestioned, that the ruler derived his authority direct from the Divine Ancestors, whose son he is, and that he rules by divine right.

It is otherwise in other countries. In Chinese literature we find that the emperor is given out to be the Son of Heaven, that he ruled by virtue of the mandate which he had received from Heaven. The meaning of the Son of Heaven in China is totally different from that in Japan. In Japan the Son of Heaven meant the descendant of the Divine Ancestors, living forever in a lineage without dynastic change. But in China dynasties change and the ablest man of the time becomes the emperor. There on various occasions a dynasty was overthrown and its place taken by another. In all such cases the position taken was that, the deposed emperor had forfeited his right to rule by his weakness or misconduct; that Heaven had withdrawn its mandate, and had conferred authority to rule upon his successful rival. This is all; no further proof of this was required than the fact that his rival had prevailed. That in itself was demonstration enough that Heaven had transferred its

mandate to him and he had become Son of Heaven.

If this is the meaning of Son of Heaven, the King or Emperor of every nation or even its dictator or president would be Son of Heaven, and the meaning of Son of Heaven becomes meaningless. If the title "Son of Heaven" had had such a meaning, Japan would have had many dynasties, such as Fujiwara, Taira, and Minamoto; especially after the Shogunate system was introduced she would have had many dynasties, Hojo dynasty, Ashikaga dynasty and Tokugawa dynasty, as these families had a strong sway and governed the people in their turn, and after the Tokugawa dynasty would have come the Mikado's dynasty again in power. But all is otherwise in our country. Here the Emperors are of the same one line from the Imperial Ancestress, the Sun-Goddess, down to the present Emperor. All of them have been Sons of Heaven and reigned over Japan more than two thousand and six hundred years, respected and adored by the whole nation, whosoever has had the real power and been strong in the country. Shoguns who have had sometimes the strongest power in the country were never Sons of Heaven.

The belief in the divine right of the king to rule has also prevailed in England and on the Continent.

F. Willoughby remarks that it was in matters temporal strictly analogous to the belief in the supreme authority of the Pope as the direct representative of God on earth in respect to matters spiritual. James Bryce states that from the fifth to

the sixteenth century whoever asked what was the source of legal sovereignty and what the moral claim of the sovereign to obedience of his subjects would have been answered that God had allocated certain powers to govern the world, so that it would be a sin to resist his ordinance.

Such being the case with regard to our Divine State, our people perform their duties willingly towards the Empire; our autocratic government rests upon the consent of the governed, therefore if the autocratic governments of other countries rest upon the consent of the governed we are the same in this point with them. But even if there exists the consent of the governed, if that consent were not voluntary and with pleasure their governments are different from ours, because with us the consent of the governed is all voluntary and with pleasure. Friedrich remarks in his "Constitutional Government and Politics" (p. 15): "Hitlers, Mussolinis, and Stahlines claim that their governments rest upon the consent of the governed; but so may a hold-up occur with the consent of the victim. Yet few people would confound rape with a love affair. To clarify this aspect, it has been said that consent is voluntary in the sense that it is being willed."

It is true that, if the consent is got by constraint it is not a real consent but is only an apparent one. Constraint is indicated on the part of a government by frequent killing, large-scale confiscations, numerous types of corporeal punishment, and if there were such

a thing there is no real consent; real consent would be indicated by obedience to the orders of the government, respect on the part of the people towards their government, voluntary donations, willing sacrifice of life and so forth.

There are consent and constraint in every government in the world; Friedrich says that in the limited state to-day both consent and constraint are rather low while they are rather high in contemporary Italy. But we think that the consent is high and constraint is low in limited states while the consent is low and constraint is high in absolute monarchy. Generally speaking it is so; but there are exceptions; in Japan constraint is very low and the consent very high, and with regard to the Emperor it is all but consent on the part of the people, and no constraint at all on the part of the Emperor.

As the Japanese people believe that their country is a divine state, they are loyal to the state, they are loyal of their own accord as they know that this state system best suits them. They are all prepared to accept the state on its own terms; they are not rebellious, they accept their divine state with pleasure.

F. Willoughby says in the preface to the first edition of his "Government of Modern States," 1918:

"The revolutionists in Russia, Turkey, Prussia and elsewhere have not been struggling for a particular form of government, structurally considered, but for one resting upon essentially different principles from the ones under which they were living. The social

democratic and liberal parties in Germany and Japan to-day are demanding not a mere change in the machineries of their governments but that the basic principle upon which such governments rest shall be changed, that sovereignty shall be held to reside in the people instead of an autocratic ruler claiming to hold his throne by divine right and to be responsible to God alone for the manner he exercises his powers."

His saying might be correct with regard to Germany, for in Germany the Weimar Constitution of 1919 was framed and her structure was changed from the empire to the republic; but with Japan Willoughby made a great mitsake. In Japan we do not know such a strong party as the social democratic or liberal party, and even if they have existed it is very clear that they have never demanded that the sovereignty of the state shall reside in the people instead of in an autocratic ruler who claims to hold his throne by divine right. In Japan no one questions the divine right of the Emperor, and all believe and conceive that their country is the divine state.

Some writers say that ignorance and inertia, sheer mysticality and superstition are for many people the angle from which their reason for allegiance may be viewed; but in Japan even if mysticality may have been existent no superstition was; we know of what nature our divine state is and we are loyal to the state, because we think that system of government is historical and is best suited to us.

To many persons it appears that, without a state

terrible things would happen. They are afraid of that and wish to have a state; they need the state, to protect themselves against a foreign enemy, they need the state to shelter their family from danger. In some countries people need the state to educate their children or to find for them employment, so that they appear to accept the state. Sometimes the insecurity of the economic system in which they live makes them inclined to political institutions which seek to render that insecurity a less fearful prospect.

This is in the main true also of Japan, but the real cause of the love of and devotion to the state on the part of the people is that they are convinced that their country is the divine state and they must serve it.

Thus, Japan being the divine state, the Emperor is the State itself; in one sense, the patriotism, the love of the state and loyalty to and love of the Emperor are the one and same thing. We speak of the patriotism and loyalty of the Japanese nation; but we can neither find a patriot who is not loyal to the Emperor in our country, nor loyal man who is not a patriot.

Patriotism and loyalty in this sense is the motive which actuates the people of Japan; this explains to a large extent great political movements in our country. It explains the national character of all the movements in ancient times as well as at present. It explains why Japan is under the Emperor of a lineage that has continued unbroken for more than



two thousand six hundred years, keeping its independence unimpaired, it explains the circumstances which led to the overthrow of the Shogun and the Restoration of the personal rule of the Emperor as the centre of executive authority, and it explains why our army and navy men and others have been bravely fighting and doing everything good in the service of their country in China since the present conflict with China began in 1937. Dyer noticed this truth and said in his "Dai Nippon": "When once their meanings were fully grasped by some of the leading spirits, they spread throughout the nation, and even the poorest in the land felt that they had to take a part in them and that the ghosts of their fathers were guiding their hands and beating their hearts" (p. 35).

Our people have had a real sense of loyalty to the Emperor. Our moral injunction is to be willing to sacrifice ourselves for the sake of our Emperor. In former times men committed suicide at the death of their lord, to follow him to the world beyond. Occasionally self-destruction became so wide-spread that it was necessary to seek to restrain it by law. This spirit of personal loyalty which was generally exhibited during the old régime was directed towards feudal lords, but with the passing of feudalism, this centred itself on the person of the Emperor; with an intensity which it is hard for Occidentals to appreciate. After our contact with the nations of the West this notion of loyalty has combined with that of patriotism, and we have become a patriotic loyal

nation.

Nothing illustrates the old Japanese spirit so much as the institution of suicide; it shows in a very clear manner some of the characteristics of what we have in our Japanese mind, even at the present day; for although this mode of procedure is not resorted to so frequently as in former days, it indicates the attitude which the great body of the people still assume when there is any question either of national or individual importance at issue; when a question of honour was involved, death was preferred by the samurai (warrior) as the key to the solution of many perplexing problems.

The recognition of this spirit helps to explain many of the features connected with our history, not only under the old régime but also at present, after the country had intercourse with Westerners. They say that the Japanese, in this respect, resemble the ancient Greeks who always placed loyalty and duty to the state before self-interest.

General Nogi, the hero of Port Arthur in the Russo-Japanese War, committed suicide on the eve of the funeral of Meiji Tenno. General Nogi had always lived up to the highest military ideals of Japan. Stern to others, and most of all to himself, he allowed no personal feeling, no thought of his own comfort or advantage to stand in the way of his entire devotion to his profession and to his country. His wife cut her throat in the traditional manner at the same time that her husband ripped his bowels across with a sword. The idea still persisted in Japan of the devoted servant accompanying his lord into the realm of

eternity, and this was the inspiration of the act. It is said that one object of Nogi's suicide was to call attention by his death to the nation's growing slackness in its pursuit of patriotic duty. Here we see the combination of loyalty with patriotism. To Westerners such an act of self-destruction may appear fanatic, and some may assume it to be even immoral, but we understand the idea well. Nogi is made a divinity and is the object of the national worship.

The institution of redress (*Kataki-uchi*) shows a character of the Japanese mind. This institution found its origin in a Confucian precept. Emphasis was laid in the precept that a son must not live under the same heaven with the murderer of his father; and stories of vengeance taken by sons upon the assassins of their sires are numerous. Redress generally did not descend to wreak a personal revenge, for it was justified only when it was undertaken on behalf of superiors and benefactors. This precept of redress was extended to the relation of lord and his retainer, and the retainer pursued unto death the slayer of his lord at the cost of his own life and that of his wife and children. At present redress of any kind is forbidden by law; but popular opinion is much in favour of this old custom.

The authorities of Japan encourage the recent trend towards nationalism. The creed of nationalism and militarism finds about the same favour in the schools and universities here to-day as outside. The educational policy is expressly based upon, and is now naturally favouring these national theories, and all the idealism of the youthful intelligentsia is devoted to nationalism and patriotism.

Although some doubt whether the theories of nationalism and patriotism are really accepted by the

students in the form imagined by the authorities and think that it is the collectivism of the new policies which attracts them rather than the semi-mystic, semi-military nationalism, it is nevertheless true that the authorities of Japan are busily teaching this creed, and that the students are coming to understand it step by step. Social democracy appears to them as a much too colourless creed as Mogi points out in his "The Problem of the Far East" (p. 202).

## 2 The Divine Kingship of Thai

In Thai (Siam) we find the theory of divine kingship existing. In the year about A.D. 1431 Khmer ideas of government were adopted on a large scale, though not to the exclusion of purely Thai conceptions, the two in fact being fused to form a new system. It may also have been at this time that the Siamese idea of the divine kingship was evolved. The Khmer cult of a royal god, a highly socialized form of an earlier Indian conception of divine kingship in which the king was to some extent identified with the Hindoo gods, may have been known to the Siamese in the latter part of the Sukhodaya period, but it no doubt obtained a firmer foothold among them after their conquest by Ankor Thon (A.D. 1431). At the Siamese capital it came in contact with Hinayana Buddhism, which had been accepted as the national Siamese religion at least since the time of Rama Gamhen, and which also had its idea of divine kingship regarding the king as Bodhisattva.

Such is the divine kingship in Thai. Wales to whose work the present writer is much indebted in this statement, says:

“Siam has much to be thankful for, both to the administrative system as recognized by King Paramatrailokanatha, and the Khmer ideas on the divine kingship that were introduced about that time, for those were stern days which often demanded the sacrifice of the individual for the good of the state, and the apparent harshness of rule was often engendered by bitter necessity. It was indeed due to the assimilation of these foreign cultural influences, combined with their own inherent qualities, that that of Ayudhya succeeded in establishing a settled and united nation, strong enough to repel the attacks of jealous neighbours, and is in a position to carry on trade with the principal commercial nations of the world.”

There is something in common between the divine kingship of Thai and the divine right of the Emperor of Japan; but instead of the modern origin of the Thai kingship ours is of ancient origin, and while the divine kingship of Thai is of dual origin, being the effect of the combination of two influences, ours is of a pure and single origin descended from the Imperial Ancestress.

Again it is said of the modern divine kingship of Thai, that although the theory of the divine kingship was inseparable from the idea of government which

the Thai received from Khmer, and although there is no doubt that it is valuable to the king in assisting him to enforce his rule in a more extensive kingdom by adding to the power of his personality, yet it produced the Khmer relationship between monarch and subjects which resembled that of a master and his servant, doing much to obscure the old Thai relationship which was more like that of father and son. It is said also that, under this modern divine kingship, in place of the trust and mutual respect which had characterized the dealings of monarch and vassals in old days, the relations of the various members of the body politic became pervaded with an atmosphere of fear, suspicion and jealousy.

In the Divine Right of our Emperor we actually find neither in theory nor in practice such troubles as they find in Thai in their divine kingship. In Japan the relation between the Emperor and the people is that of monarch and subjects, master and servant as well as father and son, from the beginning of the Divine Right down to the present time. The people put their sole trust in their sovereign, they do not fear him, instead of that they love, respect and worship him.

### 3 The Republican Idea of the United States

Our divine state continues forever and can never be changed in its nature. In the permanency of the national character of the state, we find some resemblance between Japan and the United States.

In the United States there has never been a royalist party since the federal Constitution went into effect. The country is virtually a unit in its allegiance to the republican ideal. The thought of the people is heavily coloured by a political fundamentalism. Certain formulas of free government are accepted as gospel by the great majority of Americans without much regard to their nationality. If some one propose some new governmental device such as the single-chamber state legislature, this proposal will not be listened to and discussed on its merits. It will be met with the retort that such a thing would be un-American and hence too undemocratic. That is to say, it clashes with something in the set of dogmas which make up the creed or philosophy of the average American. There are various principles of the American political philosophy, the first of these being the settled belief in the superiority of the republican form of government. On this point there is virtual unanimity among the American people.

The above is a broad outline of the statement made by an American author, Munro in his "The Government of the United States" (p. 751). He remarks that in most European republics one can find a group of people, sometimes a numerous and influential group, which desires to change the government from a republic to a monarchy, but not in the United States.

Thus the United States is a republic of democracy from the beginning to the end or endlessly, just as

Japan is a monarchy from the beginning to the end or endlessly.

It is occasionally found that governments, which in their aspects are quite divergent in type may become reconciled in practice in the adoption of certain political devices—e.g., the government of Japan, modelled largely on German lines, has become increasingly like the other parliamentary monarchies (Clokier's "The Origin and Nature of Constitutional Government." 1936).

#### SECTION IV

##### THE AUTOCRATIC GOVERNMENT OF JAPAN

Japan is a divine state, and her government instituted in accordance with that doctrine is in one sense autocratic. It is true that Japan decided, in the light of the last century, to abolish her old system of government and to establish in its place one corresponding to modern ideas as represented by the existing governments of Europe and America. To this end she made a thorough study of such governments, by sending a commission for study and on the report of this commission she adopted her present constitution.

In framing this constitution many questions were investigated and after careful consideration of the contending principles, she made deliberate choice of the autocratic type of government. At that time there was no question as to where the supreme power or sovereignty should be located, because it was out of question that the sovereignty of the Japa-



nese Empire was vested in the Emperor.

As our government is that of the autocratic type, the source of all political authority is to be found in the Emperor. All organs and officers of government are but his agents for the purpose of carrying out his will. All acts of government are as his acts and their validity comes from his sanction. All laws are but his commands, though they may have been formulated and promulgated by one of his agents. As the possessor of sovereignty, his authority is supreme, unlimited and self-determined, both as regards the extent and the manner in which it shall in fact be exercised.

This type of government is the one which found its expression asserted by the Stuart kings of England as their divine right to rule, and the boast of Louis XIV. of France who said "*L'état, c'est moi.*" It was true in respect of many kingdoms of Europe as they existed prior to the great revolution in political thought that characterized the seventeenth and eighteenth centuries. It was true of Japan in early times and is also true at present, although it has vanished in England, France and many other nations.

Autocracy is acquiesced in by the people of Japan as an immutable political principle. Ours is a good autocracy; it is a constitutional one. Autocracy may be divided into two classes; in one, the ruler is not only the possessor of supreme power, but is free to exercise it in such a manner as he may think fit, while

in the other, though possessing this authority in no less degree, the ruler is expected to exercise it through regularly constituted organs and in conformity to general provisions of law. The government resulting from action on the former principle is a despotism, and its prime characteristic is that the ruler can act arbitrarily. The government of the latter type is a government under the law, and may, in its practical operation, be of a scarcely less liberal type and permit of almost as wide a participation on the part of the public as that presented by a government resting upon the doctrine of popular sovereignty.

Our autocracy is of the latter type; we have the constitution, we have the national Diet and other organs; and our government operations are conducted in conformity with law in the same way as the government resting upon the principle of a popular sovereignty, and the Emperor rules according to the provisions of the constitution. Here indeed the ruler is the source of all political and legal authority, his powers are inherent, unenumerated, and unlimited, and to justify any act he does not have to show any grant of authority. But as the Emperor governs the country, according to the provisions of the constitution Japan is a constitutional monarchy and our autocrat is a good autocrat.

We like an autocrat, who is a good autocrat, and not a despot. In early times most of the governments were monarchies, that is, they were ruled by kings, and most of them were ruled by divine right. But

at present monarchs are in many countries responsible to the people, remaining autocrats only in name but not in practice.

During the past century, the number of republics has been increasing, and monarchies have been growing more democratic. This is one of the main reasons for the belief that a democracy is a better form of government than an autocratic monarchy. The explanation of the rapid spread of democratic government in the last century and a half is to be found in the study of what government is for and what it tries to do.

Such a study forms a comparative study of the government politics of all nations, but as regards Japan, there is no need to make that study, for we have autocratic monarchy and consider it to suit us best.

Japan is a monarchy and the Emperor is an autocrat in that all sovereignty rests in the Emperor and he can do what he likes. Japan is an absolute monarchy, because the constitution itself is the gift of the Emperor and the Emperor can abolish it altogether if he likes; the divine right of the Emperor makes our monarchy an absolute monarchy. It is not a limited monarchy like that of Great Britain; but it by no means denotes a despotism such as of Russia, Turkey or China in times gone by. If a monarch recognizes no law, no constitution as a restraint of his power he is a despot and if he governs wickedly and oppressively, he is a tyrant; but if he

governs wisely and well he is a benevolent ruler and not a despot. The word despot generally has a bad signification, because, as a rule, an unrestrained despot governs badly.

Although Japan is an absolute monarchy in one sense, yet she is a limited monarchy in another sense, because she has a constitution, and the Emperor acts in accordance therewith. Therefore our people acquiesced in our form of government and perform their duties willingly towards their Lord the Divine Emperor. This may well be an object of envy for Westerners.

If Westerners had a good benevolent Emperor as we have, they would prefer an absolute monarchy to a republic or democracy. Price declared that if he could imagine a perfect man becoming king he would submit to his authority and be prepared to renounce political liberties. Even Rousseau declared his willingness to renounce political liberty on condition that absolute monarchy guarantees the happiness of its subjects. He pledged himself to go and die with joy at the feet of Frederick the Second, if Frederick succeeded in filling his country with a happy people. The Emperor of Japan is as perfect as Price could imagine; he has succeeded in filling his country with a happy people, so that Rousseau might come to our country and die with joy at the feet of our emperor.

We shall next proceed to touch upon the autocratic government in the West and the dictatorship of the

modern world.

In the West, we no more find at present the divine right of the king; there prevails no theory of the divine right in practice, and there is no autocratic government, such as we have in Japan. The Russian government in the days of the empire rested upon an autocratic basis. The fundamental law of the old Russian Empire promulgated in 1406, though issued in response to a public demand for a more liberal form of government, was no less emphatic in enunciating the principle of autocracy. Article IV of that law says, "The Emperor of all the Russians wields the supreme autocratic power. To obey his authority, not only through fear but for the sake of conscience, is ordered by God himself." As it says, that to obey the Emperor's authority through fear is ordered by God, F. Willoughby has remarked that the fundamental law of Russia was no less emphatic in stating the principle of autocracy than the constitution of Japan (F. Willoughby, p. 59). This was in reference to the old empire, that is, Russia before the Revolution of 1917.

Germany is said, immediately prior to her adoption of the new form of government brought into existence by the Weimar Constitution of 1919, to have been an example of government resting upon an autocratic basis. We neither think that the German government at that time rested upon an autocratic basis like that of Russia or Japan, nor that there prevailed a divine right of the Emperor as it prevailed in the

latter countries; but we shall not dwell on this point, as there is no longer a German Empire on earth.

These investigations show that, at the present time, the only extensive state adhering to the doctrine of autocratic government is Japan. But we see at the same time that nowadays this principle, with or without modification is carried on in practice in many countries in Europe. The present generation has witnessed the rise in a number of more important countries in Europe and Asia of forms of government which, while not presenting any such doctrine of autocratic government for their moral or philosophical justification, nevertheless assert no less emphatically the desirability of governmental action upon the principle that the exercise of the supreme powers of the state shall reside in a single individual.

Such are the forms of government which, in rapid succession, have been established in Germany, Italy, Turkey and Iran. In these countries, these forms of government have been created not merely as a temporary expedient to meet unusual conditions, but as representing that form of government deemed best adapted to the permanent public needs of the country. In all these countries, the principle is firmly held that supreme political power should rest in the hands of a leader—"Der Führer" as he is designated in Germany, or "Il Duce" as he is entitled in Italy; and the government has been so organized as to give full expression to this principle. Many republics in Europe, Central and South America are little more

than monarchies, with a military dictator or similar head as their ruler; and although on a much smaller scale, we see this tendency even in the United States of North America, too. This might be a revolutionary change, from the liberalist viewpoint, that has taken place in political thought.

McChesey has observed in his "Political Institutions" (1938): "Monarchy has been the most persistent of the three forms of government (Monarchy, Aristocracy, Democracy). It is an error to assume, as latter-day apostles of democracy have done, that, with the advance of civilization, the educated and prosperous masses will not acquiesce in the loss of self-government. The rise of so-called dictators in Europe effectively disposes of that assumption. The popularity of Hitler or Mussolini recalls that of Henry Tudor who brought the anarchic period of the Wars of the Roses to an end and ruled autocratically without a standing army."

As regards Mussolini, he could not be forced to resign by a vote of no-confidence in the House. By this he became the legal dictator of Italy. For Hitler the voice of the people is not the voice of God (Sewart's "Dictatorship or Democracy," 1939, pp. 88, 100).

## SECTION V

### THE CHARACTER OF THE JAPANESE

#### 1 Loyalty and Valour

The character of the Japanese has an intimate connection with their Bushido which literally means

“Military knight’s way.” Bushido is a form of stoicism, it is a code of morals which enjoins loyalty, courage, self-control, frugality, simplicity of life, moderation, an indifference to wealth, the sense of justice and shame, politeness, sincerity and benevolence. Its central principle was a sense of honour and loyalty to superiors. The warrior above all valued self-control in the presence of danger and steeled himself to endure the intensest agony without flinching. Although it was a product of feudalism and was said to be the particular possession of the Samurai (warrior) class, it has doubtless in an attenuated form become the property of the whole nation. This Bushido especially exerts a powerful influence in the form of loyalty to the reigning emperor.

This is, in a way, like European Chivalry, but it differs from the latter in its lacking its individual tendency and its chivalrous attitude towards women. Bushido does not care for women, because it was held that women were calculated to enfeeble men’s courage and were an obstacle to the performance of duty.

Bushido is, on the other hand, analogous to Chinese Confucianism, but differs from the latter, in that here the paramount relation is that between a man and his lord, while there it is that of parents and children. Although in Japan the filial relation is emphasized, yet it is subordinated to loyalty to the lord. Confucius exalted courage, but it was moral courage rather than the martial valour of the warrior, while



in Japan martial courage is exalted besides moral; it is a military virtue desirable in war.

Although we have given up the customs of the Samurai with the feudal system, we pride ourselves upon having retained their spirit. Bushido or the Way of the Warrior, is more than ever a compelling force in Japan to-day, and no one can deny that much good is done thereby. Manly courage, virility, endurance, willingness and eagerness to lay down one's life for the sake of the Empire, all these are excellent things and they made the nation excellent.

We continue to have fencing and wrestling as our national pastimes inherited from feudal times, and both are supposed to keep alive the Samurai's spirit, and in this we are successful.

Parallel with or rather as a corollary of Bushido, we have hero-worship. We are taught that Japan has never suffered defeat in any war and that no foreign invader has ever secured a foothold on our soil; that Japan's dominion is gradually expanding. As all these are historical facts and truths, we listen to them willingly and with pleasure. In the ethics class in our schools the eternal glories of the Japanese Empire are thoroughly explained with expressions of the desire to preserve the country from wrong or hurt by any outside influence, as well as to increase its influence and add to its fame. Sometimes exhortation is given that sooner or later Japan must be made the mightiest nation in the East or in the world. Here it is that a boy's fertile and fanciful brain is

caught by stories of bravery and courageous adventures, of victory snatched from certain defeat, of the uncomplaining death of men who chose to take their lives rather than surrender, of men who threw themselves away in front of the parapet in order that the flag of the Rising Sun might forever float thereon. By all such inspiring stories the young generation is thrilled with the thought of the military might of the Empire. Those are the characteristics of Japanese moral education. It differs a great deal from that of the Chinese, although both are Oriental nations and have had intercourse for thousands of years with each other.

The Japanese are the most patriotic of all peoples in the world, while the Chinese are the least. The Japanese are rather communistic, while the Chinese are highly individualistic. In Japan the warrior spirit has had from the beginning a warm welcome and warriors formed the highest class of society, while in China the people have always placed the merchants high in the social scale next to the mandarins; and the soldier has occupied the lowest rung of the social ladder. In the past the merchants in Japan were the lowest of the four classes of society, the warriors being the highest, farmers and artisans coming between.

The Japanese are a highly emotional people; but they are taught to control their feelings. It seems as though we were callous to pain or calamity; we smile, no matter how great the disaster is; this is not

because we lack emotions but because we control them. We have emotions and pride ourselves upon our easily aroused sentiment of loyalty, patriotism and emotional appreciation of beauty, we are moved to tears by a pathetic story or deed, but we are taught always to control our feelings.

The Japanese are taught to control their feelings in many ways, they are taught to do so in their own homes, in schoolrooms and in society. They are taught this directly or indirectly. One indirect method for teaching the people to control their feelings and always to be cool is the art of making poems. From very ancient times, writing of poems has been practised in Japan. A technical manner of suggestion is somewhat like this:—"Are you very angry?—do not say anything unkind, but compose a poem. Are you troubled because you are about to die, leaving so many things unfinished?—be brave, and write a poem on death."

In this way every form of trouble, even death, was encountered with a poem. The lady who preferred death to loss of honour composed a poem before piercing her throat. The warrior sentenced to death by his own hand wrote a poem before performing *hara-kiri*. Prisoners who were sentenced to death read a poem or wrote it down on paper before they were executed. Even in the Meiji era and at present, people who resolve to commit suicide are wont to compose verses before quitting the world. People who anticipate death from illness write poems on their

death-beds. They write a poem also in times of ill fortune; we find many good poems which were written under the most trying circumstances of misery or suffering.

Some of those verses display an extraordinary talent, but in their nature the majority of those poems are of course very short; they are moral reflections rather than literary effusions. They afford good proof of self-mastery under pain.

## 2 Ancestor-Worship

In Japan there is Ancestor-Worship, which is the worshipping of deceased ancestors. It exercises a powerful influence upon the laws and customs of the people, so that those who would fully understand the Japanese Constitution should become acquainted with it. It is the more necessary, as in Europe and America where ancestor-worship, even if it was ever practised, has long since ceased to exist, and their people do not know what ancestor-worship is and what kind of influence it has over the land and customs of the people where it prevails. But here I shall not treat of this subject in detail, only referring the readers to the excellent work on the subject by the late Baron Hozumi which the present writer is much indebted to in dealing with this subject ("Ancestor-Worship and Japanese Law," by the late Baron Nobushige Hozumi, Fourth Edition, edited by his son Baron Shigeto Hozumi).

The practice of ancestor-worship dates back to the earliest days of our history and has survived through hundreds of generations, in spite of the many political and social revolutions which have taken place since the foundation of the Empire.

According to Dr. Hozumi, there are three kinds of ancestor-worship, namely the worship of the first Imperial Ancestor (Sun-Goddess) by the people; the worship of the patron god of the locality, which is a relic of the worship of clan-ancestors by members of the household, and the worship of the family ancestors by members of each household. The worship of the first Imperial Ancestress may be styled national worship. The places set apart for religious exercises in honour of this Ancestress are three in number: the Temple at the province of Ise, the Sanctuary of the Imperial House, and a shelf which is to be found in every household. In the two first named, the Divine Mirror, the original and its duplicate respectively represent the Imperial Ancestress.

Every Japanese worships the Imperial Ancestress in his own house, and many not only do it, but look upon it as a duty to make a pilgrimage to Ise, at least once during his life-time. Thousands of people, high and low, rich and poor, yearly flock to the Temple of the Sun-Goddess from all parts of the country.

All great affairs of state, as the promulgation of the Constitution, the declaration of war, the conclusion of peace, and the revision of treaties with foreign powers are reported to the Imperial Ancestress at Ise.

Immediately after the conclusion of the war with Russia, the Emperor Meiji proceeded to the Great Shrine at Ise to conduct the thanksgiving ceremony in person. The Crown Prince also visited Ise soon after His August Father, and paid homage to the Great Shrine.

Admiral Togo, on his triumphal return from his great victory in the battle of the Japan Sea, immediately proceeded to Ise Bay with his fleet, and paid a visit to the Great Shrine, with the commanders of the squadrons, their staffs and captains of the warships, leading three battalions of seamen under arms and a thousand men unarmed, and there the ceremony of thanksgiving was held on the 18th of October, 1905.

The author does not agree with Greenbie when he says in his "Japan Real and Imaginary" (p. 431) that, "it is a fanatical devotion which turns the footsteps of every Japanese in the direction of Ise," but it is true, when he says that "Ise is the Mecca of Japan and thither the pilgrims go and thither the Emperor goes to lay before his divine ancestor all the joys and burdens of his heart."

The Great Shrine at Ise is the fountainhead of all institutions of Japan and is deemed by the people as the holiest place of all. We respect and worship this Shrine most. Some foreign writer (Dyer) remarks of this Shrine as a group of primitive shacks with thatched roofs set well within a fenced enclosure. This is true. The temple is in the style of an ancient building intentionally so built; but at the same time it is true that the Shrine is the sole

object of the national worship.

We have a tragical story about it. Viscount Arinori Mori, Minister of State for Education, who, in 1888, dared to push aside the white sheet which hangs before the Shrine, to show his disregard of the Goddess was, a year later, on the day for the celebration of the granting of the Constitution, February 11, 1889 treacherously assassinated. The murderer became the hero of all Japan, and this sympathy with the murderer was not a sentiment of the moment, but has continued even to this day; the murderer is admired and exalted, men of the intelligent class praising this act of the murderer.

The foreign writer, who described the Great Shrine at Ise as only a group of primitive shacks, upon hearing this real story remarked, "When one contemplates this strong turn the Japanese psychology takes, one is simply horrified, and looks with fear upon a nation so set on superstition." He says too that the Japanese are still a very superstitious people at bottom, and that is why Mikadoism can maintain so firm a hold upon them.

The Emperor, besides going to Ise to pay homage to the Great Shrine on great occasions, worships on many occasions at the Temple of the very same First Imperial Ancestress in the Sanctuary of the Imperial Palace in Tokyō. High officials, to be sent abroad on duty or returning from it are ordered to worship there, after they have been given audience by His Majesty the Emperor.

The people who worship the First Imperial Ancestress, who is the common ancestor of all the Japanese in one sense, worship their clan ancestors too, who are the common ancestors of those who live

in one village or another. We are accustomed to pay homage to the local shrines dedicated to our clan ancestors. At present the local shrine is dedicated not only to the clan ancestor, but also to some local or some national hero, often of military fame. In all schools boys and girls are taught and students are instructed to pay homage to the local shrine, and in some schools shrine homage is prescribed by the regulation.

In Japan, the worship of the spirits of ancestors forms part of the everyday life of the people. They worship their ancestors, whatever kind of religion, except Christianity, they may hold. In Shintoists' houses, the offerings of *sake* (drink) and a sacred tree are continually made; and in Buddhists' houses flowers are offered every day and incense is continually burnt.

Every week, and in the case of some people all the inhabitants, Christians included, visit the tombs of their father, forefathers and ancestors and pay homage to their spirits. When a student goes to Europe or America to pursue his studies, when a soldier sets out on a campaign, when an official is sent abroad on some government mission, or when a merchant undertakes a long journey on business, he invariably visits the graves of his ancestors in order to take leave of them. When they live in places distant from their ancestral graves, they very often make long journeys in order to visit the tombs and make sacrifices at them.

Before concluding this section we shall say some-



thing of Shinto, which has much to do with the patriotism of the people.

Whether Shinto is a religion or not is a grave question, but, whether it is one or the other, Shinto teaches us to worship gods. The literal meaning of Shinto is "Way of God" and it is a native cult. Shinto seems to have arisen in remote antiquity; it had existed before Buddhism and Confucianism were imported into Japan; it might not be a religion, because it had existed before the Japanese had any notion of religion as a separate institution.

In its earlier or more archaic form Shinto might have consisted of the legends and myths of old Japan, and constituted a species of ancestor-worship of the Imperial family as well as of each individual family and that of clans, together with the worship of the living Emperor and worship of nature. A writer says that the doctrine of Shintoism is the dogma of the divine origin, not merely of the Imperial line, but of the entire Japanese people, and even of the seas and soil of Japan. After the introduction of Buddhism and Confucianism into Japan, Shinto has been modified and is said to have become a sort of religion.

Whether this is right or wrong, Shinto does not change its essential features; and its practical teaching may be summed up as the worship of gods, among whom the living Emperor is in a sort one. Although Hershey ("Modern Japan," p. 81) sums up the practical teaching of Shinto in two commands:

"Fear the Gods and obey the Emperor" or "Be pure and clean in heart and body" it is more simple to sum it up as "god worship" only. We cannot agree with McGovern (p. 140) who says, "Shinto is supposed to be no more than a mere code of loyalty," because there are many things more than loyalty in Shinto; patriotism, for example, is one and purity in heart is another; but we quite agree with Hershey (p. 82), who says that "the value of Shintoism in developing the sentiments of loyalty and patriotism can scarcely be over-estimated."

Together with our ancestor-worship we consider of our posterity. American people, who do not worship their ancestors as we do in Japan, think much of their posterity. The preamble of the American Constitution declares that, "the constitution is established to secure the blessing of liberty to ourselves and our posterity." Thereon Americans say, "Who are we but the posterity of the great souls who wrought for our perpetual liberty? Can you agree that forefathers of America were selfish and heartless men, when this proof is given that 150 years ago they were thinking of us, their posterity and heirs? Are we of this day equally foresighted? Do you give thought to our posterity that will live 150 years from now? If we are ready to pledge our lives, our fortune, and our sacred honour for our distant posterity, we are worthy of the forefathers who did that much for us."

### 3 The Family

Family solidarity is one of the characteristics of Japan, that has persisted in spite of the altered conditions of a new age. It has been one of the ever-

present factors in Japanese life. Each man must be loyal to his parents, serving them while they are living, honouring their memory after their death. Obedience to parents has been one of the cardinal virtues. The family is more important by far than the individual and each must subordinate his wishes to it.

Needless to say, in Japan loyalty to the Emperor is the most cardinal virtue of the people; they must sacrifice their lives and family if the service of the nation personified in the Emperor requires them, so that with us filial piety is not so important as loyalty to the Emperor; but although subordinate to the loyalty to the Emperor, filial piety as much prevails in Japan as in China, and we treat it as a paramount virtue of the people, next only to the loyalty to the Emperor.

Modern individualism has, in many countries where the family system had formerly prevailed, broken down the family, destroying it as a refuge for the aged, the infirm and adolescent, and demand for efficiency has so shortened the period of adult earning power that the effect of the family breakdown is tragically intensified, and misery, stark and gaunt is the present fate as well as the future doom of millions (Brant-Storm's "Our Constitution," p. 249).

Happily for Japan, the family system has prevailed in Japan down to the present time and is prevailing at present. Our people firmly keep to that system. Our state recognizes the family as the natural primary

and fundamental unit of society and as a moral institution possessing inalienable and imprescriptible rights antecedent and superior to all positive law. The state guarantees to protect the family as the necessary basis of social order and indispensable to the welfare of the nation and the state; and it pledges itself to guard with special care the institution of marriage on which the family is founded.

The new Irish Constitution (1937) has the same principle as ours in this respect, and in express terms recognizes the family as the fundamental unit group of society and gives many guarantees thereon; moreover it says that, as morals within the home gives to the state a support without which the common good cannot be achieved the state shall endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

The family in Japan is an example of an ideal one. The ideal family group is that where all members of the family talk over their common plans and purposes, all joys and sorrows, and all contribute to the common good. Unless there is unity in the family and unselfishness among the members, there can be no true family life. The father and the mother, as the older and wiser members of the family, provide for, protect and govern the children until they reach the age of discretion. The children owe in return the duty of obedience to their parents, not until they are sure that they can think and act wisely themselves, but even after that age. This is very good for the

state, because if the children learn obedience to the law of the home, they will the more easily practise obedience to the laws of the state and get on well together as good people.

In order to make the family a significant factor of society we must have a home. Home is not a mere house in which the family is located, but is something more than that. It is not merely the place where the family is sheltered and obtains rest and recreation, but it is in the home that the foundations of moral character and the principles of life are established. No home can be successful unless there is an atmosphere of love and loyalty amongst its members. It should be a place of privacy where the family group may work out problems, away from the rest of the world.

What Wrench has said in his "American Citizenship Practice" (p. 25) is we think applicable to the Japanese family with a slight modification:

^ "Governments and private individuals are beginning to realize that homes mean more than mere shelter, and that the best ones are generally those which the people themselves own. It is in the home that the future of the country lies, and no democratic government can afford to ignore it as an institution to be protected. House making is an oldest institution which is once more being revived and appreciated.

"More and more, the functions of the home are being taken over by the public, until we are often in danger of neglecting it and of underrating its work and influence. There is greater need than ever before to develop true

home life and influence and to rear well-bred children who, in their family life, practice the first essentials of love, loyalty and service that make for efficient American citizenship."

We quite agree with the American author. Heretofore we have had in Japan good families and still we have them at present, and we are producing thereby good youngsters who are loyal and patriotic. Since the introduction of individualism and the democratic doctrine from without our family institution has received their influence in some degree, but we shall protect our family system with all our might. We like the family system and dislike individualism, and we have no sympathy with the European individualism.

Murdoch says in his "A History of Japan" (p. 1): "With us thanks greatly to the Roman law, the social unit is the individual; in Japan from time immemorial it has been the family. Hence for our intense individualism the islanders of the far east have and had but little sympathy."

#### 4 The Allegiance

Allegiance has been defined as the legal obedience which every subject owes to his prince in exchange for the protection extended by the prince to the subject; and it is said that allegiance is correlative with treason, in the sense that treason can only be committed against the sovereign by a person owing allegiance to him. The word "prince" or "sovereign" should be replaced by the word "state" in the re-

public, not by “president,” because allegiance is essentially the duty owed by every one to be faithful to the one above him; citizens owe their allegiance not to the president of the state, but to the state itself.

There are two kinds of allegiance, one is natural and the other local. The natural allegiance is that owed by every subject wherever he may be. In its origin natural allegiance was dependent on birth in that state, but is extended at present to include therein an acquired one, acquired whether by conquest or by naturalization. The local allegiance is that which is rendered by resident aliens.

Again allegiance may be divided into two kinds, one is that of the subjects or citizens of a state and the other that of aliens. What is a subject or citizen? Two principal rules for determining it have been adopted by modern civilized nations. One is parentage and the other the place of birth. Generally speaking, the former has been followed by the nations of Continental Europe, while the latter has usually been adhered to by England and America. A given nation, however, may to some extent follow both rules at the same time.

As different countries have different laws relating to nationality and allegiance there may arise double nationality. Therefore the terms “dual nationality” and “dual allegiance” have been used in international law, and there is a conflict of laws relating to the subject which has given rise to much discussion. The American Constitution says that all persons born

in the United States are citizens of the United States, whether born of parents who are citizens or aliens; the law of Japan claims as Japanese every person born of a Japanese in Japan or abroad. Thus a child born of Japanese parents in America has a double nationality and there may arise a conflict of claims.

International lawyers give many suggestions to solve this difficulty. They say that conflicting claims to allegiance should be settled by neighbourly international agreements, that a child should become a citizen of that country if he remains there, that the duties of allegiance are determined by the law of that one of the two countries in which the citizen actually is, and that a child in attaining his maturity has the right to elect which of the two allegiances he will retain, and this election he would be required to make.

As Japan has noticed this difficulty, she has enacted a law releasing from allegiance Japanese born in other lands. A child of Japanese parents born in foreign lands has the right of election.

When the Japanese Government passed such a law at the time of trouble with the United States on the question of double allegiance, an American writer (Woodburn) thought that it was a friendly act towards the United States to do away with the evil of double allegiance and said, "If the French boy, born in America and grown to manhood should go to France, he might be claimed and forced into military service by the country, from which his American citizenship, acquired by birth in this country, might not be able to protect him."



The Japanese Constitution recognizes two kinds of allegiance, and says thus: "The conditions necessary for being a Japanese subject shall be determined by law" (Article 18). The expression "Japanese subject" is used to distinguish a Japanese from a foreign subject or citizen. There are two ways in which an individual can be a Japanese subject: one is by birth, the other by naturalization or by other process of law. All these Japanese owe their allegiance to the state and it is a natural allegiance. Besides this, there is the local allegiance which aliens owe who live in Japan. Of these two the natural allegiance is more important because of its continuity, and we speak commonly of it.

Allegiance is the duty which every man owes to be faithful to the sovereign in a monarchy whether he holds land or not; it differs therefore from homage which is the undertaking to be faithful in respect of land binding the vassal to the lord of whom he holds the land; and it also differs from fealty which is the simple undertaking to be faithful fortified by an oath.

In England the sovereign in the Coronation oath promises good government, and his subjects owe him allegiance; but it is to a very limited extent that subjects are required to take the oath of allegiance, the form of which is fixed by 31 & 32 Vict. c. 72. Those who take the oath are a limited number of officials, members of the defensive forces, clerical persons prior to ordination, and members of parliament, though an affirmation in lieu may be made by those without

religious belief.

By the way it may be mentioned that lately the members of the Irish Oireachtas abolished their oath to the English King. An important change was effected by the Constitution (Removal of Oath Act 1933). This was the deletion of Article 17 of the Constitution, by which every member of the Oireachtas was required before taking his seat there to take an oath of allegiance to the king.

This was indeed a drastic innovation when we remember that the oath was an integral part of the Irish Treaty of 1921. Article IV of that treaty, in fact, prescribed the form of the oath to be taken by members of parliament of the Irish Free State. This change was carried out in the teeth of the most serious protests of the Secretary of State for Dominion Affairs. In November, 1933, the Oireachtas passed the Constitution (Amendment No. 22) Act and in 1935 abolished the right of appeal to His Majesty in Council; enacted the Irish Nationality and Citizenship Act, by which the British Nationality and Aliens Act was repealed so far as the Irish Free State was concerned. The contention has been put forward in the Irish Free State, that by virtue of this Act, Irish citizens have only one nationality both within and outside of that country.

Ramaswamy remarks in his "Law of Indian Constitution" on this movement in Ireland: "It may be pointed out that these pieces of legislation had, in large measure, forestalled the provisions of the New Irish Constitution. The aboli-

tion of the oath, the termination of the right of Appeal to His Majesty in Council were all carefully-planned acts intended to sever one by one the ties which bound the Irish State to Great Britain and to consolidate step by step the ground leading towards independent nationhood. In the new Irish Constitution, which came into operation on December 29, 1937, the long cherished Irish aspiration of independent nationhood takes concrete shape. Article 5 of the new constitution declares that Ireland is a sovereign, independent democratic state. The new constitution makes no reference to Ireland's membership of the British Commonwealth of Nations; nor is there any mention of the king in that document."

Allegiance is not inalienable, the subject may lay it aside by becoming naturalized in a foreign country. He can do it any time he wishes to do, but he cannot do so effectively during war so as to exempt himself from liability to punishment for treason, and the naturalization itself on such an occasion is treasonable under English law. A British subject who is also by birth under foreign law a foreign subject may renounce British nationality, but not during war so as to escape liability to military service.

In the United States the Congress, in 1884 passed an act requiring all persons in the civil, military or naval service of the United States (except the President, whose oath is prescribed in the Constitution) to take the following oath :

I, A. B. C., do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic ;

that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the affair on which I am about to enter, so help me God.

When the Constitution was adopted, a few of the states required their officials to take an oath, expressing "faith in God the Father, and in Jesus Christ, His only Son" on "the divine inspiration of the Scriptures." Such an oath constituted a religious test, because it excludes from office those whose belief prevented them from taking it.

Congress has provided also that in certain cases, as, for example, desertion from the military or naval forces of the United States or avoiding draft into such services on the part of citizens of the United States shall be deemed to have forfeited their rights of citizenship. This is not equivalent to the forfeiture of citizenship itself, for, though rights are lost the obligations are not annulled.

## SECTION VI

### RIGHTS AND DUTIES OF SUBJECTS

The Constitution of Japan has set forth in Chapter II rights and duties of the subject as a fit sequence to the Chapter I which contains provisions about the Emperor the supreme Lord of the subjects.

The rights which every Japanese subject enjoys are

civil rights and public rights.

Public rights are the rights of electing, being elected, being appointed to office, and so forth. In many countries it is a rule of public law, that public rights shall be determined by the constitution or by special law, and that they shall be obeyed by native subjects. But, as regards the enjoyment of civil rights, the custom of making a rigid distinction between native subjects and aliens is now-a-days a matter of history. At present there is a tendency in almost every country to enable aliens to enjoy, with some exceptions, civil rights equally with natives (Ito's "Commentaries," p. 37).

The rights and duties which Japanese subjects enjoy at present are ancient. From a study of ancient documents and the customs of the land it appears that they are historical and not made or given anew by the new written Constitution. Under the military régime of the Middle Ages, warriors monopolized the exercise of every public right, while other subjects were excluded from the enjoyment of their public rights; but since the Meiji Restoration, the privileges of the military class have been abolished by successive Rescripts, and all Japanese subjects, without discrimination can now enjoy their rights and discharge their duties.

Just as we say that the rights and duties, which are provided for in the constitution, are of historical origin, Englishmen say the same thing of their constitutional rights and duties. Shuttaek, who thinks

that the rights of French citizens are not historical says that the rights of English subjects are historical. The same writer says to the effect that the Constitution of France, for example, which attempts to establish a system of government on entirely new and theoretical principles, not very deeply rooted in the history and habits of the people, while being the source and guarantee of fundamental rights, is in no proper sense a consequence of rights existing independently; and that if the constitution should be abolished, the rights which it guarantees would disappear with it. He goes on to say: "The English Constitution on the other hand, so far' from being a work of modern art, is the result of centuries of bloodshed and strife, during which the freemen of England gradually secured their fundamental rights. In this view the constitution is rather a result than a cause, it exists as a consequence of the rights which it represents, and unless those rights had been independently secured, the English Constitution could never have existed."

In Japan the relation between the constitution and the fundamental rights of the subject is not the same with that in England; but the rights of subjects are historical, being very deeply rooted in the history of the country and habits of the people; they were not created by the new written constitution, but had existed long before it. The fundamental rights of Japanese subjects are far older than those of American citizens, as Japan itself is much older than the United

States.

The American constitution is an historical instrument with its legal history beginning not with the Declaration of Independence, but at a more ancient date. It is said that the American written constitution is not the beginning, but the end; for it represents the last stage in a series of changes, the great landmarks of which are the Magna Charta, the Petition of Right, the Habeas Corpus Act, and the Bill of Rights of England (Shuttack's "Selected Essays," *The True Meaning of the Term Liberty*, p. 185).

According to Bloom, the rights and immunities which are enumerated in the ten amendments of the constitution were already in existence. The people had all their rights and liberties before they made the constitution. The constitution was formulated for the purpose, among others, of making the people's liberties secure against oppression by the government which they were setting up (Bloom's "The Story of the Constitution").

In Woodburn (p. 71) we find a similar observation: "The rights of the people are guaranteed not by the words of a written constitution but rather by what has been called the spirit of the constitution and its unwritten law. These include the principle and forces by which the people are moved and controlled, by which the life of the state is governed—customs, usages, precedents, political habits, public expectation, the spirit and love of American liberty, on which the nation was founded and by which it is guided. All

these are the forces to be relied upon to restrain the power of legislatures. The right of the people to peace and order, to life, property, and the pursuit of happiness, existed many years before the constitution was created. Their rights are guaranteed by forces older than and above the constitution. The constitution is not the fountain from which they flow. That document is the consequence, not the cause, of these rights."

Apparently a different view is held by some, for example, Friedrich who says: "It is customary to look upon the bill of rights in any constitution as the instrumentality through which the arbitrary expansion of government is limited, and a sphere of natural rights of each individual is thus safeguarded against political interference. The idea that certain rights are natural rights has a long history, whatever its grounds. It produces the impression that certain things, like private property, or freedom of assembly, have an existence and meaning quite apart from any government. Yet, in fact, all of them presuppose a government. It would, therefore, be more appropriate to call these rights social, or rather political. The Bill of Rights expresses the dominant ideas concerning the relations between individual citizens and the government. But evidently they presuppose a working government for their enforcement." (Friedrich's "Constitutional Government and Politics," p. 133).

We do not know whether one can trace the origin of the American Constitution and the rights of the American citizens provided for therein, as Shuttack and Woodburn observe; but we must acknowledge



the historical origin of the fundamental rights of American citizens; and at the same time we think that Americans as well as Englishmen should acknowledge the historical origin of the fundamental rights of Japanese subjects in like manner. We say that, the rights of Japanese subjects were accorded long before our written constitution was promulgated. They have enjoyed their rights since the foundation of the Empire.

In this sense Japan has been all along a liberal state, because a liberal state is one which can and does guarantee the people's rights and give them protection and security, with or without formulation in a written law.

### 1 The Rights of Subjects

There are two methods of guaranteeing individual rights. One is, that the framers of the constitution may attempt to state these rights in definite form in the constitution and thus impose strict limitations upon the government in respect of them, and the other is, that the framers may refrain from all mention of them in the constitution and thus leave the matter wholly for legislative determination. The United States and Japan belong to the former case, while England is of the latter.

Since the United Kingdom has no written constitution, no one knows how many fundamental rights the English people have or knows the nature of those rights, as we know clearly those of the Japanese

people. English people have as many rights as Japanese subjects have, nay they have more rights under their unwritten constitution than we have under our written constitution. We know this by reading Dicey's classical work. In that work the author points out among other things certain clauses of the written Belgian Constitution giving guarantees to the subject: and with their declarations he contrasts freedom of person, of discussion, of the press and so forth: and with these declarations he contrasts the means by which the English Constitution secures the same rights.

The constitutional rights of the American citizens are said to be the right to personal liberty, to freedom from arrest without warrant, freedom of speech, freedom to march in a procession with provocative banners and so forth. If we mention the rights which are provided for in the documents of the constitution both in the original and the amendments they are (1) the right of immunity from punishment by any bill of attainder, (2) the right to have the privilege of the writ of *habeas corpus*, (3) to enjoy freedom of worship, freedom of speech, freedom of the press, freedom to assemble peaceably, and freedom to petition government for the redress of grievances. They include likewise (4) the right to keep and bear arms, (5) to be immune from billeting of soldiers, (6) to be secure in person and at home against unreasonable searches and seizure, (7) to be given in the federal courts all manner of protection, (8) assurance against

being twice placed in jeopardy for the same offence, (9) to be assured a speedy and public trial by jury, (10) to be informed of charges, and 'so forth.

Munro enumerates in this way twenty-five rights guaranteed by the Constitution of the United States, and adds that that list of twenty-five does not form a complete catalogue of them all, but only of the fundamental ones. He remarks that, as a matter of fact nothing is more difficult to make than a list of the American citizens' constitutional rights as they have been interpreted by the courts, and that it would take a whole volume to name them. We do not think that there are so many as twenty-five kinds of fundamental rights of American citizens. We think that they may amount to some ten or a little more. Bloom has mentioned in his "Story of the Constitution" that the first amendment relates to religion, free speech, right of assembly and petition, etc.; that the second amendment does not confer upon the people the right to bear arms, it merely forbids congress to infringe upon that right; that the third amendment protects the people against military instruction in their forms; and that the fourth amendment guarantees the security of the people in their persons, houses, papers, and effects against unreasonable searches and seizures, and that thus the rights guaranteed to American citizens are very numerous.

The rights which the Japanese Constitution gives to Japanese subjects may be less in number than those given to the American citizen by the American

Constitution. Certainly such rights as the right to pass freely from state to state and the right to acquire a residence in any state do not exist in Japan, as Japan is one consolidated state instead of a union of many states as the United States of America is. But the fundamental rights which are given to the subjects by our Constitution are nearly the same as in the United States.

An important comparison of the constitutional rights of Japanese subjects is to be instituted with the constitutional rights of the Irish people. The new Constitution of the Irish Free State provides formally a list of rights of the people, which includes the (1) liberty of the citizen, (2) inviolability of the dwelling of each citizen, (3) freedom of conscience and the free profession and practice of religion subject to public order and morality, (4) the right of free expression of opinion, (5) the right to assemble peaceably and without arms, (6) the right to form associations or unions, and (7) the right of every citizen to free elementary education. Anson observes that this enumeration of principles in the Irish Constitution is merely the translation into constitutional articles of rules which prevail in England as the result of the operation of the ordinary law ("The Law and Custom of the Constitution," p. 295. New ed).

The forms of ruling in the Irish Constitution are (1) all citizens shall, as human beings, be equal before the laws, (2) titles of nobility shall not be conferred by the state, (3) the state guarantees in

its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen, (4) no citizen shall be injured by the reduction of the working day to seven hours, and (5) the right to education (Articles, 118, 119, 121). The Japanese have those rights too, which are provided for in the Constitution and the laws made under it.

Even the majority of the rights given to the people by the Constitution of the Soviet Union are familiar to our ears. We have freedom of speech, liberty of the press, and so on as the Soviet people have. The terms such as freedom of street processions and demonstrations are rather new to us, but we have this freedom too, although our government must prohibit such proceedings if they endanger the existence of the state or disturb the social tranquillity, as they are also prohibited in such cases in the Soviet Union.

Such rights of man as the right to work, the right to leisure, and the right to education, which were proclaimed down the centuries and obtained at last by the people of the Soviet Union and many other countries, are not clearly enumerated in our Constitution; and it may be said that in Japan the right of subjects to material support, a fulfilled right to life is not guaranteed by the Constitution, at least not in express terms. Strong says that such a right as this cannot be guaranteed by any capitalist government, not even by the most advanced, and that it is made possible by the public ownership of all the productive wealth

of the country. Japan is not a country of the public ownership of wealth and it does not give such rights to the subjects just as all other states except the Soviet, do not give them to their citizens (Strong, "New Soviet Constitution," p. 107).

Now we will state more fully the rights of Japanese subjects.

In framing the Japanese Constitution and in setting forth the rights of subjects, the framers have provided that the government shall have the power to take such action as may be necessary to prevent their abuse and to enable the government to carry out proper measures of reform looking to the general welfare of the community; that is the policy adopted by Japan. F. Willoughby says that this system was adopted by Switzerland as well as Japan in framing her constitution (F. Willoughby, "The Governments of Modern States," p. 31).

The Japanese Constitution carefully provides that all the individual rights set forth are subject to further limitation and determination by law. For example, the sections guaranteeing religious toleration and freedom of speech read: "Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief" (Article 28); "Japanese subjects shall, within the limits of law, enjoy liberty of speech, writing, publication, public meeting and association" (Article 29).

This form of ruling resembles that of the Italian

Statuto. Every one of the individual rights set forth in the Statuto is said to be subject to legislature infringement, and the government has not been constitutionally prohibited from impairing private rights. For example, no one shall be deprived of personal liberty save in accordance with law, all citizens enjoy civil and political rights equally, and are eligible to civil and military appointments, except where the laws otherwise provide (Article 24). The press will be free, but a law prevents its abuse (Article 28). Similarly, guarantees against arbitrary judicial proceedings, guarantees of the inviolability of domicile, and property, and of freedom of peaceful assembly are all subject to restraints in the interest of public order.

In Italy, except where new protocols have been sanctioned by special enactment the Statuto of 1848 continues in force; and although the reading of that document discloses no clue to the practical operation of the Fascist system, it still provides for the definition of royal power, for the organization of the senate, and it contains the formal exposition of the right of citizens (Steiner, p. 56).

Steiner, examining the Italian document says, that by such restraints in the interest of public order the Fascist régime has made a mockery of the guarantees with which the Statuto intended to buttress the right of individuals. He is likely to say the same of our Constitution, but we shall reply to that. Our Constitution guarantees very well the rights of the subject which are written down in the Constitution; but there

are limitations thereto provided for by law.

Looking upon those limitations by law to the exercise of the rights of the subject one would say that the Japanese Constitution gives the subject many rights *de jure* but *de facto* none, all rights being overridden by subordinate laws and ordinances. A certain critic says that the use of the term "subjects" instead of "people" or "citizens" in the Constitution imposes a tacit limitation on the actual liberty and equality of the citizens of the state. We are very sorry to find among our countrymen a man who makes such mistaken observations (Mogi's "The Problem of The Far East," p. 58).

It is true that our Constitution uses the term "subjects" instead of "citizens." It is because Japan is an Empire and the term "citizen" does not suit us, just as the term "subjects" does not suit republican states such as the United States or France. In the United Kingdom of Great Britain which is a monarchy the term "subjects" is invariably used instead of citizens.

The liberty of the subject has sometimes been hampered by law through the application of police regulations, in the restriction of expression of opinion and association, and his rights are in several directions limited by law. But that cannot be helped in any country whatever, this kind of liberty falling within the purview of law in order to preserve peace and order in the country. We see that many limitations of the right of liberty and other legal rights are allowed in the Constitution of every state, monarchy



or republic.

The rights or rather the exercise of the rights is limited by law, but the rights themselves given to the people in the Constitution cannot be taken away by law; they can be taken away only by the Constitution itself. Certain fundamental rights of subjects or citizens which are guaranteed by the Constitution can be taken away by Constitutional amendment, but the procedure of that amendment is very difficult in every state. Only in a state where those amendments can be made very easily, such as England where the Constitution is unwritten, many such amendments are made by ordinary law. Yenning says in this connexion, that it is desirable, not only that the ordinary law shall protect the fundamental rights of the subjects, but also that the power of changing the law shall be so restricted that these rights may not be interfered with; he says too, that with a written Constitution, this is an end which in principle it is fairly easy to accomplish (Yenning, "The Law and The Constitution," p. 231).

In England, where there is no such distinction between Constitution and ordinary law as it is in all countries which possess a written Constitution, the people confuse the two. Dicey writes, "The English rule of law includes three things: (1) the absence of arbitrary power on the part of the government; (2) the subjection of every man, whatever his rank or position, to the ordinary law of the land; and (3) the derivation of Constitutional rights from the decisions

of the courts on individual cases brought before them." There being no fixed fundamental rights of the subject, written down in documents as in Japan or the United States, any person in England may lawfully do any act which is not forbidden by law, and he may say what he pleases provided that it does not offend against the laws relating to riot, nuisance etc.

The rights which English people have under their laws and the rights which we have as fundamental rights under our Constitution may be the same in substance, and their limitations by law also may be the same; nevertheless, whereas ours are Constitutional fundamental rights theirs are merely liberties left to the people by the ordinary law and depend entirely on the law for the time being. Their rights, we call them rights, are given by the law and may be taken away by the law; an ordinary Act of Parliament is sufficient to extinguish those rights. Yemning in stating the liberties or rights of the English people says, "A Government with the majority in both Houses of Parliament can abolish any or all of the personal liberties, no matter how fundamental they may be considered to be by the minority."

Thus in theory the rights of the English people may be restrained very easily by the legislature, but in reality the people enjoy their rights more fully than those of other states. Really they are free to do as they like so long as they do not break any definite laws. This right of the English people depends upon a tradition of liberty. They do not trust

officials, there is probably no civilized country where the officials as such receive so little respect as in Britain, and certainly no place where such a jealous eye is kept upon the limits of their power.

The other and larger tradition in England is the national habit of tolerating the opinions of the minority with which the majority happens to disagree. This habit, measured by an absolute standard, has probably lost some of its force in recent years, but not by comparison with the growing intolerance of other countries (Dicey, p. 6).

Japanese subjects enjoy in practice Constitutional rights which they have in theory. Their rights are provided for in the Constitution, and can never be taken away by ordinary laws.

But the Constitution itself makes exceptional provisions to meet the requirements of exceptional contingencies. As the ultimate aim of a state is to maintain its existence, the state in time of danger will have to sacrifice without hesitation some of the rights of its subjects, in order to attain its ultimate aim, if it considers that such a course is the only available means by which it can save itself and its people and secure its existence. This is not only a right of the Sovereign, but also his duty. Did he not possess this emergency power, he would be impotent to discharge his functions in the time of crisis.

The power of a state thus to secure its existence is everywhere acknowledged. It is expressly declared in the Constitutions of certain countries, and tacitly

understood in those of others. It is better that express provision therefor be made in the Constitution, and at the same time the conditions for the exercise of it stated, for it has been thought undesirable that the Constitution should be left defective as to the requirements at a time of emergency. Of course it is sometimes very difficult to determine whether a case is so momentous as to be called a case of emergency and to justify the trampling upon the rights of the subjects, or an ordinary one where the necessity of the moment does not call for drastic measures, but at all events it is for the government to decide this in each particular case.

The rights of Japanese subjects may be enumerated as follows (Articles 22-30) :

1. Eligibility to civil and military appointments;
2. Liberty of residence and change of abode;
3. Right of not being arrested, detained, tried, or punished except according to law;
4. Right of being tried by judges ordained by law;
5. Inviolability of domicile and its freedom from search;
6. Secrecy of letters;
7. Inviolability of property right;
8. Freedom of religious belief;
9. Liberty in regard to speech and publication;
10. Liberty in regard to public meetings and associations;
11. Rights to present petitions.

The above is the classification which the present

writer has adopted in his "The Constitution of Japan" (1930, p. 55), but of late he has thought it better to reduce the number of kinds of right and classify them into eight, by combining similar kinds of rights into one. Then they are: 1. personal liberty, 2. liberty of residence, 3. liberty in regard to speech and other matters, 4. freedom of religious belief, 5. right of property, 6. right to present petitions, 7. right to public offices, 8. secrecy of letters. We shall explain each of these rights in turn.

#### (1) Personal Liberty

The most important right which a man has is that of personal liberty. The people who speak most of personal liberty are the Americans; they say that the American liberty was secured by uniting the states in a firm union; all other aims were subordinate to the safeguarding of the liberty that had been won by the Revolution; they say that human life comes from God, God endows man with the right of liberty when He breathes life into him, and the framers of the Constitution were obeying the will of God when they sought a way to perpetuate liberty. The right to enjoy liberty comes from God, the guarantee of the right to enjoy liberty must come from the human heart; the Constitution affords this guarantee, it enables the American people to exercise their power to maintain their liberty against foreign attack or internal dissension. The signatories of the Declaration of Independence pledged their lives to liberty; their

hearts directed their lives to liberty, their hearts directed their hands when they sent forth this declaration of war for freedom. The framers of the Constitution were no less in earnest.

It is but natural then that Americans say much of liberty or freedom, because they got their independence after heavy bloody struggles with the English nation.

The personal liberty so dear to the Americans is also dear to other nations as well, and its protection by Constitutional safeguards is professed by most of the nations which have written Constitutions.

Liberty in the United States has a broad sense. Although this term is not used in many clauses in its broadest sense yet it is used in a broad sense, including other great and important rights besides that of personal liberty, as, for example, religious liberty, liberty of speech and of the press, liberty to bear arms, of petition and discussion, liberty to obtain justice in the courts, and many others, all of which are to-day regarded as fundamental rights in the United States. It is broader than the sense in which the same term is used in Magna Charta, and may well be interpreted to include other rights besides that of personal freedom, for the reason that it was probably intended so to do by the framers of the American Constitution.

In England Magna Charta and other great constitutional documents proclaim abstract rights, but in so doing they were merely declaratory of the existing

common law. Liberty in England does not need to invoke the authority of any formal written enactment. Every man is free to do what he will except in so far as the law otherwise provides.

Chalmers (p. 329), comparing the liberty of Englishmen with that of Frenchmen says that the former is more valuable than the latter. He further says: "The French Constitution, while purporting to guarantee liberty in various forms, contains a provision enabling the executive to declare a state of siege, and when a state of siege is declared the executive can disregard the ordinary law altogether. It is obvious how valueless any declaration of abstract liberty becomes to the subject in face of such an overriding power; and how much more effectively freedom is safeguarded by our own law, which knows no such thing as a state of siege, at least in time of peace." The English government can declare a state of siege too, but not without an act of Parliament.

In England personal liberty is secured by common law as well as by public law. Keith says, "The security of personal liberty is established partly by the civil action for damages for false imprisonment or malicious prosecution, in which a jury may award very high damages. On the occasion of the erroneous taking away of a woman, who was wrongly believed to be a person mentally unsound, the local authority hastily apologised and paid £500 compensation rather than meet an action, and the Home Secretary meanwhile expressed regret that such an error could have been." (Arthur Berriedale Keith, "The Constitution of England from Queen Victoria to George VI," vol. II., 1940,

p. 384).

The Japanese Constitution contains a provision relating to a state of siege (Article 14). Therefore according to Chalmers our liberty might be less secure than that of Englishmen, still the Japanese subjects have personal liberty effectually safeguarded by the Constitution, and they are satisfied therewith.

The Constitution gives a guarantee to the subject for his security (Article 23). Arrest, confinement and trial can be carried out only under the cases mentioned in the law, and according to the rules mentioned therein; and no ill conduct whatever can be punished but in accordance with the express provisions of law. Thus, and thus alone, can the security of personal liberty be maintained. The connexion between personal liberty and police measures and criminal punishment is very close; as a subject has personal liberty, any police or prison official, who arrests or imprisons any one, or treats him harshly, otherwise than in accordance with law, is liable to heavier punishment for so doing than a private individual would be.

In every constitutional country, as in Japan, the individual liberty of the people is regarded as a right of great importance, and due assurances are given for its security; the liberty guaranteed by law is the right of subjects, and is, so to speak, the source of the development of their life and intelligence. People enjoying liberty are usually good enlightened citizens, capable of contributing to the prosperity of the state.



Japanese subjects have the right of being tried by judges ordained by law and cannot be deprived of this right (Article 24). This is for the protection of individual right. The judges established by law must deal impartially between litigating parties, free from the restraints of power; and every subject, however helpless and poor he may be, is to be enabled to contend in a court of law with the high and mighty, and giving his version of the case, defend himself against prosecuting officials. The Constitution, therefore, does not suffer encroachment upon the judicial power nor denial of the rights of individuals, by the establishment of any extraordinary tribunal or commission, other than by the competent court fixed by law. Individual subjects will in this way be safe in putting their reliance upon the independent courts of justice.

As to the process of trial, no case is to be brought before a police official, but always before some judicial authority; defence shall also be permitted, and trials shall be conducted openly. Any judicial authority, that resorts to violence in order to extort confession of crime from an accused, shall be liable to specially severe punishment.

Such is the extreme thoroughness of care taken for the protection of subjects. Torture and other methods resorted to in trials in the feudal times, are already things of the past, and will never be resuscitated. Article 23 of the Constitution ensures against the revival of such obsolete usages, and places

personal liberty on a safe and stable basis (Ito, p. 47).

As it is, in a constitutional government, a matter of great importance, that the liberty of individuals be respected and that the enjoyment of it be free from the interference of power, our constitution guarantees the personal liberty of every subject just as the constitutions of many liberal states do.

At the same time our constitution makes it possible to enact laws according to which the government is enabled to arrest, detain, try or punish the subject just as other constitutions make it possible to do so.

Our Constitution does not give our subjects absolute personal liberty; peace and tranquillity must be maintained, crime and vice must be suppressed, and the promptness and certainty of the measures taken for making researches be secured. There is no such thing as absolute personal liberty or private rights; they are always relative as between private parties; and the same thing is as true between private and public parties. If people were given complete and absolute liberty without any control, the result would be ruin. Hence it is never the purpose of any constitution to give any such protection. Although there are many indications that in a popular nation all forms of personal liberty are protected, they are mere forms, in reality there are many limitations, and limitations are good.

It is not good to give the government an absolute and complete power to delete personal liberty; without restraint it would be tyranny: likewise it is not

good to give the people an absolute and complete liberty without limitation, otherwise it would be ruin. For this reason some compromise must be made between private liberty and public authority. There is some need of securing personal liberty against government power and also some need of limiting personal liberty by government power; the ideal situation is a matter of balancing one against the other, or adjusting conflicting interests. In many states the framers say, that their constitution has been made to strike a proper balance between personal liberty and social control through express limitations stated in the Constitution and laws. We may say the same thing with regard to the Constitution of Japan.

All what we have said above are of the rights of ordinary people; with military men the case is different. Although each and every one of the provisions regarding the rights and duties of subjects that are not at variance with the laws relating to the rules and discipline of the army and navy, is to apply to the officers and men of the army and of the navy (Article 32), yet military men must observe military laws, and such of the provisions of the Constitution relating to rights, as come into conflict with military laws and commands, are not to be applicable to persons in the military service.

For example, persons in active service are prohibited from discussing either the military system or political matters, forming themselves into associations or holding meetings for the purpose; nor are they

allowed freedom of public discussion freedom of writing, of publication and of petition, on political matters.

The right of self-defence is among the rights of personal liberty. Where personal liberty is infringed the law permits in a limited measure the right of self-defence. A man may protect his person, house, or property against felonious attempts and may use force to protect a relative or weaker person from attack, or to preserve public peace. But the right is subject to the rule that the force used must be proportionate to the need and be a necessary mode of meeting the emergency. On the other hand, a generous interpretation is given to the right to use force to prevent the commission of crime or the escape of a felon.

## (2) Liberty of Residence

The liberty of residence is guaranteed by the Constitution (Article 22). Every Japanese subject is free to fix his residence either permanently or temporarily, to hire dwelling-places, or to engage in business at any place within the boundaries of the territory of the Empire. It is provided that this liberty may be restricted by law, but by law alone and it is put beyond the reach of administrative measures. This shows how highly this liberty is esteemed.

The reason why the inviolability of the dwellings is guaranteed is that, a house is a place in which subjects reside in security, and therefore not only are private persons forbidden to enter the abodes of other people, without the consent of their occupants, but also any police, judicial or revenue officials, who,

in connexion with either a civil or a criminal case or with an administrative measure shall enter the house of a private individual or make a search therein, otherwise than in cases specified by law and in accordance with the provisions contained therein will be regarded as guilty of an illegal act, and liable to be dealt with according to the criminal code.

(3) Liberty in Regard to Speech and  
Other Matters

The term liberty or personal liberty is generally used in constitutional law as standing for and representing all personal rights whatsoever, except those which are embraced in the idea of property. The comprehensive word is liberty; by this is meant, not merely freedom to move about unrestrained, but such liberty of conduct, choice and action as the law gives and protects. But such liberties as that of speech, writing or assembly are treated separately from personal liberty in a strict sense in several written Constitutions. Our Constitution provides a special article in which five kinds of liberty are grouped together: they are the liberties of speech, writing, publication, public meeting, and association.

These five are the media by which men exercise their influence in political or social spheres. In every constitutional country, full freedom is guaranteed in all of these particulars, in so far as there is no abuse of them by the commission of crime or of disturbance of peace and tranquillity. It is hoped that in this

often more or less the cause of bloodshed. Strict laws and severe penalties were provided in order either to suppress certain religions or to make people believe in some particular religion. There was the cruel treatment of men of heterodox faith, and they were excluded from the enjoyment of a certain measure of public and civil rights. There was no freedom of conscience. Freedom of conscience concerns the inner part of man and lies beyond the sphere of interference by the laws of the state; but for centuries it has struggled through dark paths, until it has at last come out into the radiance of open day.

Of late the doctrine of freedom of religious belief has received recognition and in some countries public declaration has been made on the subject. Since then, the doctrine has gradually won approval everywhere, until at present every country grants to its people by law entire freedom of religious belief. It is given even in such countries as maintain a state religion or favour a particular creed in the organization of society or in the system of public education. In short, freedom of religious belief is to be regarded as one of the most beautiful fruits of modern civilization, and that is why our Constitution has provided for it expressly in an article.

Belief and conviction are operations of the mind, but as to forms of worship, as to religious discourses, as to the mode of propagating a religion and as to the formation of religious associations and meetings, some general legal or police restrictions must be im-

posed for the maintenance of public peace. It is outside the pale of the law of the Empire, that on the ground of service to his god a man shall emancipate himself from the duties to the state which, as a subject, he is bound to discharge. Thus although freedom of religious belief is complete and exempt from all restrictions, so long as manifestations of it are confined within the mind, yet with regard to external matters such as forms of worship and mode of propagandism, certain necessary restrictions by law or regulations must be provided, and the general duties of subjects must be observed.

The above is a statement by Ito of the freedom of religious belief in our Constitution, which merits our full approval (Ito, p. 53). Our Constitution recognizes freedom of religious belief on the part of subjects, but directs them to enjoy it within lawful limits in the same sense as in the Occident.

What prevails throughout Japan is the custom of ancestor-worship. It is not certain whether it is right to call ancestor-worship a religion or not; some Japanese scholars say it is not a religion, but others hold it to be a religion. According to some authoritative European writers, ancestor-worship is a religion. Sir Henry Maine asserts, in his "Early Law and Customs" (Chap. III), that ancestor-worship is the practical religion of much the largest part of the human race.

Our ancestor-worship has an intimate connexion with Shintoism. Putting aside for a moment the

question whether or not Shintoism is a religion from the scientific point of view, 'ancestor-worship is in fact practised in Japan; it prevails throughout the country amongst all classes of the people and is indeed the national custom.

In Japan, as stated above (p.49), from ancient times there have been three kinds of ancestor-worship in vogue; namely the worship of the First Imperial Ancestress by the people, the worship of the local patron deity, and the worship of the family ancestors by members of each household; and these forms of ancestor-worship do not run counter to other religions even if we presume ancestor-worship to be a religion. We do not think that ancestor-worship conflicts with Christianity, Buddhism or any other religion of the civilized nations; it can go parallel with them all side by side. Mr. Morgan Young says, "In order to reconcile emperor-worship with Christianity, a formal official declaration was made that State Shinto was not religious, but only consisted of signs of respect and loyalty. The pupils were marched out from time to time to Shinto shrines, where flexions and prayers were also covered by the official declaration that these signs of respect were not religious." (Morgan Young, "Japan under Taisho Tenno," 1928). Anyhow, under the Japanese Constitution the principle of the freedom of religious belief does not prevent the punishment of acts which are inconsistent with the political, social, or moral beliefs of the community. No one is at liberty to indulge in anti-social practices and



shield himself from the consequences by hiding himself behind religion. Religious liberty is relative and not absolute, as is also the case with the liberty of speech, writing or meeting. In this main point, Japan is the same with England, the United States and other Western nations.

Freedom of religious belief is conceded in Japan almost in full. Christianity is tolerated; there are hundreds of thousands (more than 270,000) of Christians in Japan, both Protestant and Catholic; there are millions of Buddhists of all sects; and also many who do not much care about any religion in the narrow sense of the word. There are also many persons among the well-educated classes, who think that all religious creeds are artificial, and that they are human institutions intended to give spiritual consolation to the commonplace people.

In Japan every one, without regard to his religious belief, is capable of becoming a government officer, civil or military, high or low, administrative or judicial; and is able to be made prince or marquis, etc.; he may be a Christian, a Mahommedan, an agnostic, or an atheist.

It is by no means rare to find in our country, a family in which you will find its head a Christian, his wife a Buddhist, their eldest daughter a pagan, while the youngest son looks upon their creeds with indifference; they talk each in favour of his or her belief, but do not persecute one another; they all live together quietly at home, all being in peace; there is

neither compulsion, nor undue influence exercised by the parents on the children. Then you might say that in Japan there is no national religion, since religious belief is free; even the ancestor-worship is not compulsory, all the people being left free to exercise it.

In England, it is theoretically held that the denial of the truth of Christianity or the authority of the Scriptures by a person educated in Christianity is a criminal offence, although it is legal soberly to discuss and even to negative the truth of Christianity and its doctrine; it is a guilty act to publish matters relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, likely to wound the feelings of mankind or to excite contempt and hatred against the Church, or to promote immorality.

The prevailing religion of the United States is Christianity, and because of that fact certain kinds of behaviour may constitute a breach of decorum, and therefore be illegal, though they might not be so where a different religion is held. The legislature may prohibit secular employments on the first day of the week, that day being observed as a day of rest and worship by religious people generally; and it may condemn and provide for the punishment of any conduct which is condemned by the common voice of Christian people, though admitted elsewhere.

Many laws are enacted making certain actions criminal as opposed to public policy, even though they may be regarded by a member of some church

or sect as being enjoined by their religion. For instance, polygamy was enjoined by the doctrines of the Mormon Church, but an American state makes it criminal within its territory. When it was contended in the Supreme Court that the statute was void on account of its conflict with the First Amendment, the court upheld the statute by insisting, that the principle of religious freedom forbade interference with matters of conscience, dogma, or opinion which do not break out into overt acts against peace or good order. Another statute excludes from the right to vote in the territories all members of orders or sects that teach or encourage polygamy, and this statute was also held as not infringing the First Amendment.

State statutes setting aside Sunday as a day of rest and prohibiting labour on that day have been upheld. If it is for keeping that day as a day of worship by religious people it is a religious interference by the government. But an interpretation obtains that this law is based not on the religious requirement of the observance of the Sabbath, but rather on the secular idea that one day of rest in seven days conduces to the well-being of society and the day selected by the law for this purpose may be the one favoured by the preponderate majority of the people. On the question of Bible reading in the public schools, the courts are divided. Since such schools are maintained at public expense, the courts of some states hold that the reading of the Bible therein is unconstitutional, because it virtually places the taxpayer under the obligation to support religious worship. In other states the courts hold the view that the Bible may be regarded as a textbook with a legitimate place in the school curriculum.

In Japan, the reading of the Imperial Rescript on Education in all the schools, public and private is compulsory. It has nothing to do with religion, and no one in Japan is against this practice.

#### (5) Right of Property

The constitutional lawyers often divide personal liberty and property rights clearly one from the other, and say that, personal liberty is used in constitutional law as standing for and representing all personal rights whatever, except those which are embraced in the idea of property. But others use personal liberty in a wider sense including property rights as well. They say that, in many respects the right to liberty and the right to property are synonymous and there can be little doubt that if the term liberty had alone to be used, property rights would have been equally guarded; that such has been the purport of the language of many of the opinions put forward on the subject, and these opinions correctly state the historical truth as well as the social and economic fact; the property sense is merely an extension of and incident to personality (Keith, p. 281).

Although Keith's opinion is not mistaken, yet it is usual to divide rights into two classes, personal rights and property rights and to treat them separately.

The property rights of the people are very important; they are next to personal liberty. A man in general prizes the right to own and freely dispose of property next to his personal liberty; a man's

liberty might in practice avail him little if a superior authority could deprive him at any time of the fruits of his labours. In the autocracies of the past, tyranny and abuse of power by the government has been displayed as much in the arbitrary seizure of the property of a subject as in the seizure of his person. It is not to be wondered at, therefore, that peoples in the framing of their governmental charters should seek to incorporate in them provisions aiming at ensuring that their property rights, as well as their rights to personal freedom, shall be secured against arbitrary infringement by the government. In the Constitution of the United States is found a provision, stating that "nor shall any person be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation" (Fifth Amendment).

The Japanese Constitution provides for the property rights of subjects independent of their personal rights in Article 27, in the words "The property rights of every Japanese subject shall remain inviolate.

Before the Meiji Restoration (1868), that is, in the time of the Shogunate Government the agricultural population was in most cases reduced to a state of tenantry under the feudal lords; but after the Restoration, a proclamation was issued by which the land in each village was declared to be in the ownership of the farmers; and at present all subjects may enjoy the ownership of land and other property, and assurance is given in the Constitution of the security

of that right.

When it is found necessary for the public benefit that private individuals should be compelled to part with their property, in order that the requirements of some given case may be met, the determination of the regulations concerning the matter in question is confined within the letter of the law. As to deprivation or restrictions of the right of property these must always be determined by law; they are beyond the control of ordinances.

The right of property is restricted in many ways. For instance, certain kinds of buildings are prohibited within a certain distance of the boundary line encircling a castle or a fortification, and no indemnity is due for such prohibition while a reasonable indemnity is to be paid for any property taken for the public benefit. Minerals in the earth are under the control of the mining laws; forests are managed by regulations framed in accordance with the requirements of dendrological economy; the planting of trees within a certain distance from a railway line is prohibited; and wells are not to be sunk within a certain distance from a cemetery. These provisions show that the property of individuals is under an obligation of obedience to the powers of the state.

It is a characteristic feature of English law from early times that it has been peculiarly jealous of the right of property. It afforded comparatively instantaneous effective means of redressing intrusion whether on goods or on land by the writ of trespass in its various forms, and it

was the attack on the right of property owners that evoked the bitter resistance which ended in the execution of Charles I. The king's efforts to enforce to the full his rights under the feudal law, though legally defensible, provoked much popular indignation, and brought about the abolition of feudal tenures in chivalry after the Restoration, compensation being made to the Crown at the expense of the taxpayers in general.

Until very recent years the sums allowed under various Acts permitting compulsory taking of land in the public interest have always been excessive, and even now, the main public improvements often involve overpayments to persons dispossessed in the public interest. It is noteworthy that the courts are always ready to hold that legislation must not be interpreted to give the Crown power to obtain property without full compensation. But it is said that there has been of recent years a tendency in legislation affecting housing to restrict compensation for condemned property, and marketing schemes under the Agriculture Marketing Acts override in a striking manner private rights.

We see a similar tendency in Japan at present.

#### (6) Rights to Present Petitions.

The right of petition is granted to the subjects and an avenue is opened to them so that they may be able to make their wishes known. Many years ago the successive Emperors were wont to listen to the representations of the people that are read to them in their court, and to deliver them to their ministers and advisers. They strove to give redress to the grievances of the people, by supplying them with the means of making their wishes known. In that age

this was not only an attestation of their gracious virtue, but was also a necessary political experiment, that thus the ideas of the multitude might be discovered, and that the interest of all should be promoted. At present, our political machinery is, in all its details, in good order, and an institution is established for public deliberation; still the people are to have the right of petition, and every complaint of the poor and the wishes of the aged, may be addressed to the Throne, without hindrance, as it is the ultimate object of the Constitution to secure respect for the rights of the people. The right of petition at first related only to representations to the Sovereign, but its sphere has been gradually extended to cover those made to parliament and to government offices. No legal restriction is made as to whether a petition concerns individual or public interest, but petitioners must not abuse the right granted them by the Constitution; and they must observe proper forms of respect; they must not show disrespect to the Emperor, or calumniously expose the secrets of other people. It is necessary, therefore, to provide proper restrictions on this right by law or ordinance.

#### (7) Right to Public Offices

In early times, almost in every country, men were classified according to birth, and each office belonged to a particular family. Consequently men of inferior birth, however talented they may have been, were absolutely excluded from high positions in public



offices. Such was also the case in Japan in feudal times, but since the Meiji Restoration, such obnoxious practices have been swept away, and at present, appointment to a civil or military post or to any other public function, is not regulated by considerations of family. The Constitution guarantees that neither orders of nobility nor degrees of rank shall any longer be allowed to militate against the equality of all men in regard to appointment to office (Article 19).

Still, proper qualifications are established by law or ordinance, such as, for example, suitable age, the payment of taxes, the passing of examinations, are the required conditions for appointment to an office or to any post of public trust. From the point of view of constitutional law Japanese subjects may be classified, for example, into those who have a large sphere of political rights and those who have a restricted one. Minors are citizens in the sense that they owe allegiance and are entitled to protection equally with adults, but they are generally excluded from the rights to vote and the right to hold office.

#### (8) The Secrecy of Letters

The secrecy of letters is guaranteed, and violation of that secrecy either by opening or by destroying letters, will not be tolerated, except in matters of criminal investigation or in times of war or of emergency, or in cases specified by express provisions.

## 2 The Duties of Subjects

Along with the rights there exist also duties. We hear far more about the rights of people than about duties, but every right, of whatever sort, carries a duty along with it, in public law. The right to be protected on the part of the subjects carries with it the duty of helping to build up a government which is able to protect it. A country worth having is a country worth serving. The right to share in the making of laws is conjoined with the duty of obeying the laws. Rights and duties are but two faces of the same shield. An American author (Wrench, "Citizenship," p. 142) says, that corresponding to the rights are the duties of citizens; no democracy can be successful if the citizens do not recognize that their duties are as essential as their rights, they must realize that they are the government and that its success rests upon them.

Then what are the duties of the people? Vaguely speaking, the people of every country should become well acquainted with the history of their country; they should form the habit of studying the questions of public policy, that arise; they should maintain a high standard of personal morality; they should cultivate respect for and obedience to all laws; and should participate in the making of just laws, and in the selection of honest men to hold public office. The state makes large demands on its people in the way of patriotism, self-sacrifice, public spirit, intelligence, and activity. This is the same with every country, and what Guiteau has said of the United States

(Guitteau, "The Constitution of the United States," p. vi) applies without modification also to Japan.

Some of these duties are set forth in the Constitution or law, and others not; but although in some cases not set forth in express terms, they are implied in the very nature of the duties themselves and the very nature of the Constitution itself.

Such a duty as that of accepting public office if called upon to do so is set forth in the law of one country; and the lawyers say that no person who is fitted to hold an office should be unwilling to perform the duties of the office; but no such provision may be made in the law of another country. That the right to sue in the courts carries with it the duty of abiding by their decisions does not need to be emphasized. The duty of jury service in case this is demanded may be a constitutional duty and is provided for in Constitutions of some countries; but in Japan it is set forth in an ordinary law and not in the Constitution.

As to voting, many recognize the fact that the right to vote involves the duty to vote. An American writer says that, to vote intelligently is the chief duty of citizens and he puts it before tax duty. In Japan voting is looked at from the angle of right instead of duty. At present the people have begun to treat voting as a duty as well as a right, but the Constitution does not set forth the voting of the subjects at an election as their duty. The duties which are provided for in the Constitution are only two; the duty of tax paying and that of military

service.

Finer, in his "The Theory and Practice of Modern Government" says: "We can easily count more than half a hundred declarations of rights, but the declarations of duties are much fewer. The former are of course merely the result of the centuries of absolutist history, necessarily followed by systematic written codes of revolt, the latter come tardily as constitutional recognition of the true source of rights. The state cannot give more than it takes: what it gives in rights, it must take in duties."

Finer gives two examples of the declaration of duties, one being the second part of the German Constitution of 1919 and the other the declaration of duties in the French Constitution of 1793.

### (1) The Duty of Military Service

It is the duty of the people to take up arms when necessary in defence of their country, to which they owe their safety at home and their consideration and dignity abroad. All countries make the defence of the state a duty of the people. A socialist state also needs defence and provides for the military duty of the people. The new Constitution of the Soviet Union provides that universal military duty shall be a legal duty, that military services of the workers and peasants in the Red army represent an honourable duty of the citizens of the U.S.S.R., and that the defence of the fatherland is the sacred duty of every citizen; and it adds, that treason to the homeland, violation of the oath, desertion to the enemy shall be punished with the full severity of the law as the gravest crime

(Articles 132, 133).

According to a Soviet socialist, the national defence of the state is necessary for the preservation of the common life of all, which is more firmly based than under capitalism. Citizens should go to the front to defend, not the property of their employers, but their own Commonwealth from attack; citizen armies, fighting to defend their own homesteads, have in history been known as the most invincible. To produce, to cherish, to defend these is the duty of citizens in a socialist state.

The principle of military duty in Japan is utterly different from that in the Soviet Union. Our military duty comes from the idea of patriotism, that is the loyalty to the State and the Emperor. The Japanese subjects are to protect the existence, the independence and the glory of the country; therefore they are to take up arms.

In Japan, from time immemorial, the people have always held that, to make sacrifice of home and life, and to fight for one's country, in case of need, was both admirable and manly. The spirit of loyalty, like the sentiment of honour, has come down to us from our ancestors; and by gradually taking a firm hold upon the hearts and minds of us all, has become the general characteristic of the nation.

Since the Taiho period (701-703 A.D.), armies have been organized, and young people capable of bearing arms have been called upon to enlist. That is the origin of the system of conscription in our country,

although subsequently, the assumption of the political power by military families led to the isolation of the military class, and all military affairs have been monopolized by the one class, and the old conscription system was for a long while in abeyance. After the Meiji Restoration (1868 A.D.), the conscription system was restored, and in 1871, the conscription law based upon the old system was promulgated.

Under this new system, every male subject throughout the land on reaching his twentieth year is entered upon the army and navy rolls, though the number actually called upon to serve each year is determined by the organization of the standing army and navy. Those between their seventeenth and forty-first year of age are all enlisted in the militia, and are liable to be at any time called out at the outbreak of war.

Under these considerations, the Constitution provides that Japanese subjects are amenable to service in the army or navy (Article 20). The object of this provision is, that every male adult in the whole country shall be compelled, without distinction of class or family, to fulfil, in accordance with the provisions of law, his duty of serving in the army or navy; that he may be incited to valour while his body undergoes physical training; and that in this way the martial spirit of the nation shall be maintained and secured from decline.

The conscription system of Japan was completed soon after the Meiji Restoration and its high merits are due in the main to the late Field-Marshal Prince

Yamagata; but some attempts had been made to introduce this system into Japan before the Restoration, and had partly succeeded. Lord Kii, one of the most influential feudal lords, adopted the German conscription system on the recommendation of General Tsuda.

I know this fact very well. As General Tsuda is my father-in-law, I have heard personally much about the adoption of the German conscription system in Japan. It is, however, outside the scope of this book to give a full account of it here.

It may be mentioned that whether a conscription system is a proper thing in the present age is a question in world politics. Although military officers, especially those in higher ranks and men of the bureaucracy in every country insist upon its usefulness, indeed upon the necessity of keeping it up, some statesmen are against it. It is rather laughable to find that in the United States there are some who favour the conscription system and wish to adopt it for the Republic.

Right or wrong, I think it right in Japan, that the conscription system is maintained. Under this system, young men at the age of 20 appear before the Medical Board and are either accepted or rejected. A prescribed number of the accepted young men are then chosen by lot, and the others are placed in the reserves or supernumeraries.

The form of service differs according to the different kinds of service. The infantry service with

the colour is for two years, while the cavalry and artillerymen have to serve longer than that. Besides the service with the colour, there are some years of service in the first reserve, and all pass into the general reserve by the time they reach their forty-first year of age.

There are many schools and institutions for military education and training. For the army there is the military academy. From the students who have successfully completed the course of it officers are chosen. The usual course of entering this institution is for boys first to pass through the military preparatory school, or to pass an admittance examination specially given for that purpose every year. Above the military academy stands the military staff college, which receives the pick of the most promising lieutenants and there they are put through further military training. It is by the former pupils of the staff college that the many important army posts are filled.

In addition to the above-mentioned schools, there are many others, such as the paymasters' school, the surgery school and so on, where men who are taking special branches are adequately trained.

The navy is, in Japan, a modern novelty. In the history of old Japan one can hardly find what may be properly called a good navy. The present Navy Department was a new creation after the Meiji Restoration. We engaged English experts for that purpose, and our naval aspirants were instructed by



English naval officers. In consequence, the organization of the Japanese navy is on the English line, her army being upon the German model.

The Navy Department was, for the first time, separated from the War Office in 1871, and was then made an independent department. In the same year and the following years the naval academy, the naval magazine, and the naval hospital were established, and a code of naval laws and naval court-martial formulated. Besides the naval academy, there is the naval engineering school which, at first a part of the former, was subsequently made a separate institution. The naval staff college for higher training in all branches of naval science was founded in 1888.

The Air Force has, up to the present, been rather neglected in Japan, but recently efforts have been made to bring it up to the level of a first-rate state.

Notwithstanding the above-mentioned military institutions in Japan, our young men formerly did not much aspire to become military or naval officers. They tried to enter universities or higher commercial schools, where they have to bear all the expenses, and did not wish to enter the military schools with the same zeal, though indeed the government bears the expenses in the latter schools. This was partly due to the economic situation of officers at that time. The army, as well as the naval, officers are generally poor, having no private incomes; they must live on their pay which is rather small; they therefore must live economically, in fact all extravagances in living are

strictly prohibited. This was one reason why young men did not aspire to become military officers, especially at a time when militarism was attacked from every quarter, at home and abroad.

But all is changed at present and young men aspire to become men of the army or navy, especially after the outbreak of the present trouble in China.

Of militarism in Japan Professor Martin has stated in his "Representative Modern Constitution" (1923), "Militarism has frustrated all attempts to liberalize the constitution so as to inaugurate real parliamentary government. Furthermore extra-constitutional agencies like Elder Statesmen and secret machinations of politicians have vitiated whatever of constitutionalism, which has found its way to Japan." This observation may partly be true, though altogether not.

Mr. Nakano of Japan says in his "Ordinance Power of the Japanese Emperor" (1923) (p. 55); "In Japan the power to make war and peace is practically in the hands of the military authorities. By the military authorities is meant the general staff of the army and navy. The general staff can force the declaration of war and the conclusion of peace by sending an aggressive expedition against a foreign power or withdrawing troops from the field. The formation of military and naval policies is in the hands of the military authorities. The ministers of war and navy are the machines of the general staffs, and the other members of the cabinet are controlled by the Genro, a peculiar sort of elder statesmen." This statement may also be partly true, but not completely.

## (2) The Duty of Paying Taxes

The payment of taxes, like military service, is one

of the great duties of subjects, as it meets one of the necessities for the common existence of the nation. The government must have the financial support of the people; it cannot do the things that the people expect it to do without their loyal support.

There are two doctrines on taxation. The old one is the doctrine of benevolence or remuneration, which holds that a tax is a benevolence paid in response to exaction, or a remuneration for certain benefits which have been received upon a mutual understanding. Those who say "Taxes are the price paid for benefits received; a tax is an advance of money to obtain the protection of the social order"; or "Taxes are a premium of insurance paid by all the members of a community called a nation, having for their effect the assuring of the enjoyment of their rights, and the efficient protection of their interests" subscribe to this doctrine. The British democratic idea of "no taxation without representation" may be regarded as belonging to this doctrine. In that view, taxation is a sort of exchange of services by the government for duties by the people.

This doctrine is not valid; when the duty of paying taxes is made a business matter of exchange of services between the government and the people, making the consent or the refusal to pay them dependent upon the benefits received, individuals may decline to pay them according to their own private calculations. The result would be an impossibility of preserving the existence of the state.

The new school of theorists on taxation hold that, taxes are levied for the maintenance of the state, and are not a price paid in return for services rendered by the government; therefore people are bound to contribute their taxes even when no benefit is received. Taxes do not exist upon the basis of contract between the government and the people. The state has the right to impose taxes, and the subjects are bound to pay them. The legal ground of taxation lies in the sheer duty of the subjects. They, being one of the constituent elements of the state, ought to pay taxes, in order that the expenditure necessitated by the nature and objects of the state, may be met. The taxes are to meet the public expense of the state, and it is a duty to be shared by its members to pay taxes not only for the needs of the existing government, but also on account of public debts contracted in times past. We accept this latter theory.

The drafters of our Constitution entertained the fundamental conception that the levying of taxes was for the maintenance of the state, and not that taxes were a price paid in return for services rendered by the government; nor did they regard the taxes as a remuneration for the protection of private property. Their idea was independent of the idea that taxation was a mode of contract between the state and the people; it was founded on the autocratic conception of tax levy, in which the state, as a ruling authority, has the right to impose taxes, and subjects have it as a duty to pay them. In a word, the legal belief that

taxation lies in the sheer duty of the subjects of the state is the basic conception of the Japanese constitutional duties.

A tax is the contributive share of each subject in the public expenditures of the state. Since ancient times our government has looked to the taxes of the whole country for supplies for defraying national expenditures; it is the same at present. This being the case, to curtail expenses to a minimum and to make the onus of taxes as light as possible ought to be the principal care of the government. Such is the aim of the constitutional principle, that puts the finances under the control of parliament and makes taxation subject to the vote of the same.

## SECTION VII

### GOVERNMENT OF FOREIGN STATES

I have thus much expatiated upon the political rights and duties of the subjects of Japan, and now I shall proceed by way of a comparative study to touch upon the peoples of other countries in their relations with their own governments.

In a democratic state sovereignty is vested in the people, and the relation between the sovereign people and the government is one between principal and agent. As principal, the people have unlimited power, and the government, on the other hand, being an agency created by the people to act for them, like all created agencies, has no inherent powers, and can do

only those things which it is specially authorized to do, and these it must do in accordance with the provisions and limitations set forth in its charter or constitution. In such a government, the determination of the scope of the powers of the government and the manner of their exercise are matters of supreme importance.

The United Kingdom and the United States are different in their organizations, the one being a monarchy and the other a republic; but they have much in common. Both Englishmen and Americans look upon the state as an agency that is brought into existence by a people for the promotion of their own welfare as individuals. The state, in a word, exists for the people, not the people for the state. The promotion of individual welfare, individual liberty, and individual rights constitutes thus the very basis and justification of the state.

Such a conception of the state is rejected by us as well as by Germans and Italians, but it is difficult for Englishmen or Americans to understand the meaning of the state in any other fashion. In English history Parliament which was reduced to one House, even before the trial of the King who was executed on January 30th, 1649, declared in defence of their position and resolved on January 4th that "the people are, under God, the original of all just power; that the commons in England in parliament assembled, being chosen by and representing the people have the supreme power in this nation; that whatever is

enacted or declared for law by the commons in parliament assembled hath the force of law, and all the people of this nation are concluded thereby, although there be no consent of the king or House of Peers” and declared that “The people of England and of all the dominions and territorites thereto belonging, are and shall be, and are hereby constituted to be a Commonwealth and Free State and shall from thenceforward be governed by the supreme authority of this nation.”

Although the Rump was expelled with military force by Cromwell, who became dictator, still this government was in theory a government of and by the people, and this made an epoch for the sovereignty of the people in England.

In England the people have the sovereignty, although the doctrine of the supremacy of Parliament prevails there. F. Willoughby says, that in England the doctrine of the supremacy of Parliament constitutes one of the root principles of the political system; the government is subject to no legal limitation upon its powers in respect of individual rights, nor for that matter, in regard to any action; and that thus, legally, Great Britain has a government with powers despotic as those ever possessed by any oriental ruler. He goes on to say, that therefore legally the personal and political rights of the individual in Great Britain are absolutely without formal protection against government (F. Willoughby, “The Government of Modern States,” p. 32).

But we think that this is in mere form; and only apparently it is so, as stated above. In reality there are the people behind the Parliament, who can make any kind of Parliament. We say, therefore, that the people in England have sovereignty.

The state which has most clearly declared the sovereignty of the people in modern times is the Irish Free State. The preamble of its new Constitution contains the declaration that "We . . . seeking to promote common good, with the observance of prudence, justice and charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, do hereby enact and give to ourselves this Constitution."

The Irish people thus give to themselves the new Constitution, and put themselves above the Constitution. There the people are the sovereign.

In the United States no one doubts the sovereignty of the people, and although all recognize the doctrine of the supremacy of Congress, there is no such doctrine as the sovereignty of Congress in the United States. There the people are the sovereign and their sovereignty is absolute as that of the Emperor in Japan.

Only the question, if it may be called a question, has been raised concerning the sovereignty of the people in the United States, whether "the people" means the people of the United States as a whole or those of each separate state. When the preamble of the American Constitution containing the words "We, the people of the United States" was drawn up, the idea that "the people" was intended to mean the people



as a whole, of the country known as the United States of America, irrespective of the states of which the people are the citizens, did not enter the heads of the delegates at that time; and afterwards there arose some doubt thereof. When the question came to the court Justice Story ruled:

"The Constitution of the United States was ordained and established not by the states in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by the people of the United States. So far from saying that it is established by the governments of the several states, it does not even say that it is established by the people of the several states, but it pronounces that it is established by the people of the United States in the aggregate, words that cannot be plainer than the words used."

Black, commenting in his "Our Unknown Constitution" upon this decision says: "This last statement is certainly extreme. It is indeed made plain that the Constitution is not ratified by the governments of the individual states, but it is not clearly indicated whether the ratifying parties are to be considered singly or a composite whole. And in contradiction to the fact that a single political whole was meant is the fact that in ratifying the Constitution the people did vote by states."

The people are the sovereign in democratic states; they are superimposed above the constitution, the constitution proceeding from the people. Constitutions are of course laws of the highest quality and

are the supreme law of their respective jurisdictions, beyond which there is nothing higher; but there is an exception; that is, the sovereign will of the people which is higher than the Constitution.

Beard, by pointing out that the Constitution proceeds from the people, and that the people are the original source of all political authority exercised under it, says that, by "the people" is meant a whole people and not any particular group or class, and that from the juristic point of view, the Constitution is not only the work of the whole people, but it also bears in it no trace of the party conflict from which it emerged (Beard's "An Economic Interpretation of the Constitution of the United States," p. 10).

The Americans are proud of the sovereignty of the people, just as the Japanese are proud of the sovereignty of the Emperor. When the present writer read a statement by Bloom in his "Story of the Constitution" of the comparison of the Sun and the American people he could not but wonder how well that comparison tallies with our comparison of the Sun and the Emperor. Our comparison of the Sun and the Emperor suits far better than that of the Sun and the people in the United States, because our Emperor is the son of Heaven, descended from the Sun-goddess and only one entity, while the American people are human beings and a group of many persons instead of a single entity. For a moment substitute the word Emperor for the people in the following statement and you will understand its meaning more clearly

than with the original. Bloom's statement is as follows (p. 52).

"An the sun is the center of attractive and controlling power that binds and moves the planets in one system, so the people are the center and controlling power that binds and moves their governments in one system.

"The limits of the powers of the Sun and the people are not known. They have never been tested to the limit. The composition of the Sun is hidden in Nature, the composition of the people is hidden in human nature.

"Reason assumes that the Sun has powers beyond those known to us. Reason reinforced by knowledge asserts that the people have reserved powers which never have been expressed in written law."

Although Bloom personifies the people as if they were one entity, they are in fact thousands of human beings. Then, when he says that the people are the centre, of what things do they form the centre? Bloom says that the United States and the states may be compared to planets revolving round their Sun the people; but as the states and the United States are both composed of the people, this means that the people are revolving round the people, that is to say, the people revolve round themselves. It is meaningless. With us, on the contrary, the Emperor is the centre and His subjects are revolving round him; thus, the centre and those who revolve round it being quite distinct, we may well understand the analogy made by Bloom with the solar system.

As the law which controls the solar system is divine and therefore perfect, so the fundamental law which

controls the relation between the Emperor and His subjects is divine and therefore perfect. This fundamental law makes it clear that all Japanese subjects shall revolve round the Emperor.

The Japanese are one nation, we are all equal under the Emperor, and we are all equal before the law, the only difference among subjects at present being between original subjects and newly acquired subjects of Chosen and Taiwan. We have no "free state," and no "self-governing dominions" as there are in the British Empire, nor have we two kinds of subjects as there exists a double citizenship in the United States of America.

The American Constitution uses the term "citizen" several times, but nowhere defines it. Apparently it is assumed that people holding allegiance to the United States would be regarded as citizens. The Constitution contemplated a double citizenship, for it speaks of citizens of the different states as well as citizens of the United States. There is a clause in the Constitution which provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. It would also seem to have recognized a federal citizenship, in the clauses providing that the President shall be a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, and that senators and representatives shall have been for nine and seven years respectively citizens of the United States.

The fourteenth amendment of the Constitution decreed that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside" and definitely rejected the doctrine of separate citizenship, and put an end to some embarrassing questions such as "Could an individual be a citizen of the United States without being also a citizen of some state in the Union?" or "Could he have citizenship without possessing national citizenship?" and made clearly the citizenship of the United States the primary and fundamental one. Still it is true that the American people have the sovereignty of the United States as well as that of each state.

The American people commonly regard state citizenship as of little importance, and even if the states are compelled to accept as their citizens any citizens of the United States who choose to reside in them, still there is a state citizenship besides that of the United States, and American people enjoy many privileges and immunities as citizens of a state.

In the Soviet Union, which is a kind of United States, instead of a single state we find double citizenship; and in Germany, which was also a kind of the United States at the time when it was an empire and a republic under the Weimar Constitution, we have seen double citizenship, and even at present we might trace it in Germany, while in Japan we find nothing like double citizenship. We are all simply the subjects of our Emperor.

## 2 Republic and Democracy

Some political writers (Harrington, for example) divide government into three kinds, the government of one man, of the better sort, of the whole people; which by their more learned names are called monarchy, aristocracy and democracy. The corruption of the monarchy is called tyranny, that of aristocracy oligarchy, and that of democracy anarchy. Wiseman, on finding these three governments to be at the best nothing, has invented another, a mixture of them all, which is only good.

This might be true of a practical government which governs the people as the organ of a state, but is not true if he speaks of the construction of a state itself. Japan which is a monarchy with the almighty sovereign at its head, does not suffer from tyranny; instead of that it has a very good government, just as the United States, a democratic state, has a very good government.

Men are wont to contrast monarchies and republics. Thus "the Encyclopaedia Britannica," points out that "In a republic the supreme power rests in the people or in officers elected by them. The head of the state is usually elected directly, and in modern usage this fact distinguishes a republic from a monarchy in which the head is hereditary." This may not be a mistake, but Leon Dugui expresses himself more correctly thus: "When the head of the state is hereditary the government is monarchical; otherwise

it is republican, though there are some exceptions, as for example Manchukuo which is a monarchy, whose head may not be called hereditary." In modern times, in general, no matter how attenuated the power of the hereditary official may be, when the monarch is the head of a state the state is called a monarchy, and no matter how powerful the elected official may be or how long his term, the state is called a republic.

The essentials of a republic as average people of republican states understand it, are a chief executive officer chosen by the people, either directly or through their representatives, and an elective law-making body. They do not look upon any government as republican unless the people elect and control both branches of it, executive and legislative. Where the legislature is composed of two branches, moreover, the popular control must extend to both branches.

"Democracy" is not the same as "Republic"; only a particular sort of democracy may be a republic. Etymologically the word "democracy" means government by the people. Sir Henry Maine states that "Democracy means simply a particular form of government, government by many." The writers of the eighteenth century meant by democracy that form of government in which all citizens, whatever their social position, met together in a general assembly and there made laws, gave the final decision on peace or war and on the most important affairs of the commonwealth, and appointed officials to deal with the minor matters of daily administration. Demo-

cracy conceived as a government resting on manhood suffrage is a creation of the nineteenth century.

If democracy means simply manhood suffrage, Japan would be democratic, as there has obtained manhood suffrage there for many years, but if it means a government resting on manhood suffrage Japan is not democratic as our government does not rest on manhood suffrage but is the government by the sovereign. She is neither democratic in regard to the form of government, in which all citizens meet together and make laws, and give the final decision on peace or war, for in Japan the person who does these is the Emperor.

Salvemini says that today the word "democracy" evokes the concept of a political régime which grants equal rights to all citizens without discrimination of social classes. He places these rights under two headings: (1) personal rights, *i.e.* life, property, occupation, thought, worship; and (2) political rights, *i.e.*, freedom of speech, the press, association and assembly, and the right of representation in central and local governments. In this sense we are democratic, because in Japan equal rights are granted to all subjects without discrimination of social classes, and all subjects have personal and political rights (Read's "The Constitution Reconsidered," Salvemini's "The Concept of Democracy and Liberty in the Eighteenth Century," p. 105).

As regards democracy, a writer says that it is the final flower of political evolution; but others like



McChesney say that democracy is a system of coalesced change, adapted to a certain set of temporary conditions, and one cannot be sure that democracy will still fit the circumstances twenty-five, fifty, or one hundred years from now. McChesney concludes by saying: "There are obscure, underlying forces that act quite independently of the human will and shape the social structure" ("Political Institutions," p. 438).

Democracy is of modern origin. In the United States, the birthplace of modern democracy it is only a hundred years old, and its life in some countries is of decades' duration, in others a thing of future expectation.

Twenty years ago, that is soon after the World War, it was marching forward, apparently to the conquest of the whole world. But it is a dubious conquest depending upon the attractive force of a prevailing fashion rather than upon the existence of appropriate social conditions. It cannot endure, or even pass beyond the stage of paper plans, unless social conditions are favourable.

Democracy essayed at that time also to enter Japan, but as the social conditions of this country are totally unfavourable democracy did not prosper. As our imperialism is quite opposite to democracy, the latter cannot set foot in our land. Our monarchy is totally against the idea of democracy. The Western people may see in Japan a country that has ever defended its monarchical idea most successfully against the onslaughts of democracy; men did not and do not

dream of democracy or republic in the country of the Tenno.

Democracy is now endangered by the progress of nationalism, militarism and totalitarianism. Italians do not like democracy. According to them, democracy, as a human institution, is as replete with flaws and defects as human nature itself. Italian experiences between 1914–1922 probably revealed the defects of democracy in its details more effectively than elsewhere. Italians pointed to the cupidity of politicians and to their corruption; they remarked upon the deterioration of authority under democratic forms, and the prevalence of disorder; they consistently harped upon the idea that the welfare of the Italian nation and its life for the future depend upon the establishment of a strong decisive governmental power. And thus they have adopted the cult of State-worship (Steiner's "Government in Fascist Italy," p. 15).

In the United States we find the country that has always defended its democratic ideas most successfully against the onslaught of modern forces. She adopted democracy very early and it goes on well there. It is because she has been a republic from the beginning and has adopted a relative or aristocratic democracy and not an absolute one. If she had tried to adopt an absolute democracy it would have been a failure.

Wynne, who observes in his "A Supreme Senate and a Strong Empire" (p. 41) that "democracy" is an imported term which usually the less substantial but the more numerous part of the population, says

further that, it was realized that monarchy and democracy are related as the two greatest evils which can bring ruin on the state; despotism and multitudinism are both selfish and brutish. This is what Wynne said, after he has described the monarchy of Charles I of England and the English democracy after his execution. He adds that it was necessary to revert to the known system of good government (p. 13), and himself insists on a supreme senate whereby to have a strong government, which belongs to aristocracy.

Of course both monarchy and democracy, having each its evils and with the tendency to become despotic and multitudinistic respectively, can nevertheless evade the evils through their careful endeavours, and may bring about good results. Japan has a good monarchy and the United States has a good democracy. Ours is a good constitutional monarchy and the Americans have a good representative democracy. Americans have their good representative democracy, because their democracy is not an absolute one. An absolute democracy is not good, it is a government by the direct action of the people, *i.e.*, one in which the people meet together to make laws and appoint agents to enforce them, and is only possible over a very small area, and quite impossible in a large country such as the United States with more than one hundred million people. Therefore the United States of America and all other modern states have adopted the representative democracy, that democracy which is a form of government under which the people rule through their

representatives; and this form of government is called "republican."

Although there may be many kinds of republics, for instance, an aristocratic republic where an educated class exercises power, and an oligarchic republic where a handful of nobles exercise power; they are not republics in the true sense. To be a republic in the true sense, a state must have a government by many, that is to say, it should rest on the principle of democracy, and we understand the American republic in this sense and look upon it as one of the best republics, although some Westerners and even Americans themselves regard it as an aristocratic republic with an appearance of democracy.

There are two accepted meanings of democracy in the United States, though both imply government by the people. The one meaning includes the people who have the right to vote in their great assembly, exclusive of many other persons. The other meaning is broader, including every one within the boundaries of the country, not only those who can vote, but also those who cannot vote, such as children and others who have no vote or who have lost the right to vote.

Of these two meanings of democracy, we chiefly use the former, while the latter was adopted by Lincoln when he said "a government of the people, by the people, and for the people" (Wrench, p. 133).

The republic failed as completely as did the monarchy. There were forty governments in the years from 1910 to 1926 and seventeen attempts at revolutions. The republican governments combined all the disadvantages of dictatorship with an insufficiency in administration unparalleled in the

modern world. After the revolution of 1910 the government was completely unable to control its own supporters, and cruelties as bad though certainly no worse than the cruelties of the absolute monarchy took place (Speaman's "Modern Dictatorship," 1939, p. 25).

## CHAPTER X. THE IMPERIAL DIET

The Diet is an essential part of the political machinery, even it has no share in the sovereign power. The Diet not only plays its part in legislation, but directly or indirectly it has also the responsibility of keeping a supervision over the administration. If, therefore, the Diet is guided by experienced and practical minds, and is able to make a proper use of its rights peaceably and quietly, there will be no preponderance of one power over another, but a just balance and perfect harmony between the legislative and the executive power will be secured (Ito, p. 62).

### SECTION I

#### THE BICAMERAL SYSTEM OF THE IMPERIAL DIET

The Imperial Diet is a bicameral body, consisting of two Houses—the House of Peers and the House of Representatives. Both Houses have equal and practically coordinate powers. Though the House of Peers seems more strongly constituted and more advantageously placed it is really much weaker than the House of Representatives.

This bicameral system is not of native origin but was taken up after the Western pattern. The establishment of two Houses has long been followed in European countries, and good results of the system have been attested by history, which has also proved that countries having but a single chamber have not

been free from the evil effects of such a system.

Some writers have declared the bicameral system to be an obstacle to the development of the community; and moreover that the House of Peers is of no use. They insist on the one House system. But the one House system is not good; when all political forces are united in a single House, and are subject to excited passions and liable to encourage one-sided movement, with no restraining and equalizing power over them, that House may in the intemperance of biased excitement overstep the limits of propriety, and, as a consequence, bring about the despotism of the majority, which may in turn lead to anarchy. Then the evils would be far greater under such a system, than they were in the days when there was no representative system at all. If no representative government is instituted, then well and good; if, however, it is established, it can never be free from the evils of partiality, without the provision of two chambers. The reason for this is to be found in the nature of things, and ought not to be lost sight of on account of the particular circumstances of the moment.

The above is the criticism passed on the one House system by Ito, one of the framers of our Constitution which adopted the bicameral system (Ito, p. 63). He remarks that the object of establishing the House of Peers is to make it a bulwark for the Imperial House and for preserving conservative elements, and so by its means to maintain the organic existence of

the state. The body of beings of a high organic order is not a mere aggregate of different elements, but an incorporation of sets of different organs, the healthy cooperation of which is necessary for the activity of the mind. Were the eyes not located in separate positions, it would be impossible for them to obtain a right optical angle; nor could the sense of hearing be complete, were the ears not turned in different directions. The aim of a representative system is to draw profit from the results of public deliberations. The attack that has been levelled in a certain country against the House of Lords as being indolent and imbecile and an impediment to the despatch of business, may be valuable as a stricture upon temporary shortcomings of that organ, but has no weight in the consideration of the permanent policy of the country. Ito concludes by pointing out that, whether regarded from a theoretical point of view or considered in the light of mere fact, two chambers are indispensable organs in a representative system of government.

Thus in Japan two Houses, the House of Peers, which is an assembly of the higher class of the community and the House of Representatives, which is an assembly of elected commoners, unite together and constitute the Imperial Diet. The two Houses are to possess equal powers and neither House by itself alone is to be competent to participate in matters of legislation, and it is desired through this system that deliberation be thorough and minute, and that public opinion be impartially represented.



An European writer pays a tribute of eulogy to our system by saying, "The Japanese form of Parliament presents several features of decided interest, especially with reference to the composition of its chambers," and he furthermore says, "It may be noted that except the Senate of the United States of America and those of other countries directly modelled upon it, no second chamber seems to have been so successful as that of Japan." I can not say whether our two chamber system is so good as the writer represents; yet I think that we are happy to have two Houses instead of one.

The United States adopts the bicameral form of legislature, but the reasons why she adopted it are different from ours. The advisability of setting up two Chambers seemed to all countries where the bicameral system had been introduced to be beyond doubt as proved by experience, which had taught that the tendency of all single assemblies was to yield to the impulse of sudden and violent passions, and to fly into hasty or ill-advised action. This is the same in all countries; but the United States has, besides this, reasons of her own.

In the United States the decision to provide a legislative body of two chambers was reached with practical unanimity, as it seemed inadvisable to vest in a single chamber the great legislative authority which would ultimately be exercised by the federal government. Moreover, there was in the United States a strong desire to provide in the national

government some safeguard against the growth of legislative centralization. This could best be prevented by giving the states, as states, control over one of the federal chambers. There are two elements to be represented, namely the states as states, and the people of the country without reference to the states in which they live. State sovereignty and popular sovereignty should thus be bound up together, each a check upon the other.

As the nature of the Congress in the United States, especially that of the Senate differs from the House of Lords of England and the House of Peers of Japan, the framers of the American Constitution met a difficulty which the statesmen of the latter countries did not experience. One of the most knotty problems was how to arrange the representation of the people in the Congress in such a way as to give due weight to the claims of numbers without swamping the smaller states.

The solution finally adopted is that the representation in the House of Representatives is based on the number of population, while in the Senate all the states, large or small, were equally represented by two senators apiece. This compromise remains in force to-day, with the result that a small state with a small population has two senators and one representative, while a large state with a large population has also two senators and forty-five representatives.

The Parliament of the United Kingdom is also bicameral; it consists of the House of Lords and the House of Commons.

In early times, in England there was only one

house, and afterwards it divided itself into two. At first the representatives of the counties and towns met along with the House of Lords, in the Great Council as it came to be known by that name. Coming as they did from among the common people these representatives were quite weak, as they were greatly overawed by the great nobles. But in 1340 they separated into two Houses; the House of Lords consisting of representatives of the nobles and the higher clergy, and the House of Commons representing the people of the counties and towns; and this made an important step forward in the development of Parliament. As time passed, the House of Commons became steadily more important and in later centuries held the real power in government.

The thirteenth century, which opened with the winning of the Great Charter in England, was also the time when the Great Council was transformed into a Parliament representing the whole nation. In the year 1265 Simon de Montfort called a meeting of the Great Council and found it advisable to make it a new kind of meeting. Up to that time the Great Council had been made up of only the important barons and churchmen. He saw that in order to rule successfully he must rally to his support all classes of people. In addition, therefore, he permitted two knights from every county and two citizens from each of the more important towns to take part in the deliberations. This was the first time in the history of the nation that plain citizens had a place in the Great Council. In 1295 King Edward II called a meeting of Parliament, in which all classes of people were represented. This Parliament is known as the model Parliament, because it served

as a model for later meetings. In this Parliament it was decided that no general tax could be levied upon the nation without the consent of its representatives.

According to the Italian Constitution, the bodies exercising legislative power are the King, the Senate composed of members appointed by the King for life from certain specified classes of citizens, and the Chamber of Deputies, composed of members chosen by the electorate. What has become of these bodies under the Fascist dispensation? The Senate has been preserved; Mussolini has merely curtailed its powers and modified its membership by appointing Senators faithful to the régime. The Chamber of Deputies, on the other hand, has been abolished to make way for a body completely subservient to the executive power (*"Italian Constitution under Fascism"* by Egidio Reale, *"Foreign Affairs,"* October, 1939, p. 154).

The Soviet Union cannot be an exception to the bicameral system of the world at present, and two chambered government of that country bears a superficial resemblance to the Congress of the United States. The Supreme Soviet (council) consists of two chambers, the Soviet of the Union and the Soviet of Nationalities, each elected by the citizens, but on a different basis. The Soviet of the Union is elected on the basis of population and has at present 570 members; the Soviet of Nationalities is roughly equal to it in number, with its members elected from among the constituent republics and provinces.

During the popular discussion regarding the council many people suggested that the Soviet of Nationalities be abolished, on the ground that the second chamber generally operates to slow down legislation and thus

check the popular will. Stalin's reply to this was "A one-chamber system would be better than a two-chamber system if the Soviet Union were a single national state. But the nationalities of the Soviet Union have also their particular specific interests, connected with their national peculiarities, and there is need for a special supreme organ that would reflect precisely these specific interests."

Now comes in the Imperial Diet of Japan for our consideration.

The Emperor convokes the Imperial Diet; he opens, closes, and prorogues it; and he dissolves the House of Representatives (Art. 7). The opening, closing, and prorogation of the sessions of the Imperial Diet, is to be effected simultaneously for both Houses; and when the House of Representatives is ordered to dissolve, the House of Peers shall at the same time be prorogued (Art. 44).

The Diet is regularly convoked once in each year. But when the House of Representatives has been dissolved, members are to be caused by Imperial order to be newly elected; and the new House is to be convoked within five months from the day of dissolution (Art. 45).

Dissolution means the cutting short of the members' term, which is fixed at four years for members of the House of Representatives, and deprives them of their capacity as such before this term is up. According to this provision, the House of Representatives has been often dissolved and subsequently members were

elected and the new House was convoked.

In addition to the ordinary sessions there are extraordinary ones, which may be convoked when urgent need arises. We had extraordinary sessions at the outbreak of the Sino-Japanese, the Russo-Japanese, and the World War, and the Sino-Japanese Incident.

The provision that, without special permission of the government, the Diet may not be in session for more than three months of the year is also a feature which should not be passed over. It is intended to avoid thereby the endless protraction of deliberations. The prolongation of a session or the postponement of the closing of the Diet by reason of unavoidable necessity, is to be carried out by Imperial order; and the Diet has no power to take such steps upon its own responsibility. No subject of debate, whether a vote has been taken upon it or not, shall be continued to the next session, unless special provision has been made in regard thereto. This provision of the term of a session is said to aim at preventing anything like the Long Parliament of England.

There are to be in each House a president and a vice-president. The presidents of both Houses are nominated by the Emperor from among the three candidates elected respectively in the House of Peers and in the House of Representatives.

The president of each House is to maintain order in the House, regulate the debates, and represent the House outside it; he is to continue to assume the direction of the House during the interval that

the Diet is not in session. In the event of his disability the president is to be represented in his functions by the vice-president (Law of the House, Art. 7, 10, 11, 13).

The president is to receive an annual allowance of 7,500 yen and the vice-president 4,500, while such members of the House of Peers as have been elected thereto and such as have been nominated thereto by the Emperor, and members of the House of Representatives are each to receive an annual allowance of 3,000 yen (Law of the House, Art. 19), one yen being little less in value than 25 cents of the United States.

The House of Representatives in Japan has the same rights and capacities as the House of Peers, neither superior nor inferior. But in explaining each of them separately we shall begin with the House of Peers, as our Constitution puts it first, contrary to the plan of the constitution of the United States, which puts the House of Representatives before the Senate, the former being in section 2 and the latter in section 3.

## 1 The House of Peers

We say the House of Peers (House of Lords, Upper House, Herrenhaus, Senate); but the nomenclature is neither correct nor accurate; because there are many members in the House who are not peers at all, and there are many peers who are not members of the House. Therefore such a name is not an accurate

one; it is rather liable to occasion misconceptions.

The House of Peers in Japan, as in many other countries of the bicameral system, is provided as a means of preserving an equilibrium between political powers, of restraining the undue influence of political parties, of checking the evil tendencies of irresponsible discussions, and of securing the stability of the constitution, for the purpose of maintaining harmony between the governing and the governed, and permanently sustaining the prosperity of the country and the happiness of the people.

The object of having a House of Peers is not merely to admit the higher classes to some share in deliberations upon legislative matters, but also to secure the representation of the prudence, experience and perseverance of the people, by assembling together men who have rendered signal services to the state, men of erudition and men of great wealth. It is thus intended to enable them to maintain an intimate connexion among themselves and to form a body of the upper classes, so that the benefits of the establishment of the House of Peers may be realized. The provisions as to its composition are made by the Imperial Ordinance concerning the House of Peers.

At present, the House of Peers (414 members) is composed of (1) male members of the Imperial family of full age (16 in number); (2) all princes and marquises of the age of 30 and upwards (15 princes and 30 marquises); (3) counts, viscounts, and barons of the age of 30 and upwards, who have been elected



by the members of their respective orders, to the total of 18 counts, 66 viscounts, and 66 barons; (4) persons above the age of 30 who have been nominated by the Emperor for their meritorious services to the state or for their erudition, not to exceed 125 in number (in fact the majority of these members are ex-officials who have served under the government of one cabinet or another); (5) 4 members of the Imperial Academy above the age of 30, who have been elected by the members of that body; (6) one or two persons above the age of 30, who have been elected in the provinces from among and by 100 or 200 male inhabitants thereof respectively, paying there the highest amount of direct national taxes on land, trade or industry, to the total number of 66. The term of membership under (3), (5) and (6) is seven years.

The whole number of non-aristocratic members, that is the Imperial nominees plus the members elected from among and by the members of the Imperial Academy and great tax-payers is nearly equal to the number of noble members. At first, Article 7 of the Ordinance provided that the number of the former shall not exceed that of the latter. It shows that the House attaches importance to the nobility, and this is some excuse for calling the House the House of Peers, notwithstanding the inclusion of many commoners. Article 7 was repealed afterwards, and this limitation was abolished.

Among these various classes of members, the elected members and the Imperial nominees get an annual

allowance of 3,000 yen as members of the House of Representatives do. This is unfair. An annual allowance should be given to all members if it needs to be given; it should not be given to any if it need not be given. Many insist on the abolition of this allowance from the social point of view, especially as regards wealthy members. They say that they cannot understand the reason why it should be necessary to give annual sums to such rich men as great tax-payers at the expense of poor tax-payers. This system is so anomalous that some foreigners have made misrepresentations on this subject. In a book, written by an English author on Modern Japan, which is generally trustworthy, it is pointed out that "All members of both Houses, save the representatives of the highest tax-payers, who are themselves wealthy men, receive a salary of 800 yen (£ 80)." This is a mistake, for the highest tax-payers also receive the salary; but it is a very reasonable and rational mistake. It is indeed wrong for rich men to get salaries at the expense of poor tax-payers. All members without exception receive travelling facilities over the railways.

It is said that the election of members from among the nobility is a very good system; it has proved particularly successful, since by stimulating competition to enter the Diet it has caused the peers to take a keen interest in politics, and has also operated to weed out the unfit. McGovern says that in many ways it would seem that England might do worse than follow Japan's lead in this matter (McGovern, "Modern Japan," p. 104).

A comparative study will show that the House of Lords of England corresponds to our House of Peers.

In England, the House of Lords which is commonly spoken of as the second chamber, is historically older than the House of Commons, being the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption, for more than ten centuries.

At the present time it contains about 740 members; they are peers who hold their seats (1) by hereditary right; (2) by creation by the sovereign; (3) by virtue of office—law lords, 2 English archbishops, 24 bishops; (4) by election for life—Irish peers, 28 in number, but half of this number is vacant at present; (5) by election for duration of Parliament—Scottish peers (16).

We have no churchmen in the House of Peers of Japan, an element peculiar to the English Parliament. Law lords are also peculiar to Great Britain, where legislature and judiciary are found commingled, in contrast to Japan and the United States, where these two constitutional institutions are clearly separated from each other.

The law lords, also called lords of appeal, are chosen from among the distinguished jurists of the United Kingdom, and unlike other members except the bishops are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court of appeal from the

lower courts of England, Wales, Scotland, and Northern Ireland. And since a body of seven hundred members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training. The functions of the House of Lords as a court are therefore performed by the law lords of the chamber. The law lords do not form a committee; their sessions are officially sessions of the whole House.

The composition of the American Senate is far more simple than the corresponding chamber in Japan and the United Kingdom; it is composed of 96 members representing 48 states, each of which, large or small, sends two senators. The Senate, which consists of so small a number of members as to be less than a quarter of that of other countries is a semi-permanent body, each member being elected for a term of six years. A senator can be and often is re-elected again and again, and a senator with a loyal constituency is the most permanently conspicuous figure in American political life. A senator, at first, should be chosen by the legislature of his state, but afterwards democracy has had its way, and in 1913 it was provided for by the Constitution that senators should be elected by direct popular voice, the electorate being the same as that which elects the members of the Lower House.

The Senate is composed of two Senators from each state, whose term of office is six years. Senators were formerly

elected by the state legislatures, but are now chosen by direct popular election (Amendment 17). (See Henry Pottschaefer's "Handbook of American Constitutional Law," 1929, p. 152.)

## 2 The House of Representatives

The composition of the House of Representatives (House of Commons, Lower House, Abgeordnetenhaus, Chambre des Députés) is determined by the Law of Election for the Members of the House of Representatives.

This House is under the governance of that statute, while the House of Peers is under an ordinance called the Ordinance Concerning the House of Peers; that is, one is under a statute, while the other is under an ordinance. The reason for this difference is that, as the former affects the rights and duties of the people in general it must be provided as a law, and any change must be effected by means of a law; but on the other hand the latter affects the rights and duties of those concerned in the House of Peers only, and it need not be provided as a law, and a change in its terms, that is, any amendment or addition in the provisions, can be made by ordinance.

The system of election undergoes many changes. In Japan, formerly a system of restrictive election was adopted; subjects of the Empire, over 25 years of age, paying direct taxes to the amount of three yen a year were qualified to be elected; but now the paying of direct taxes is not a necessary qualification.

Eligible persons must be thirty years of age or over, having had their "domicile" in the electoral district for one year or more previous to the drawing up of the electoral list, and still continuing it. Members are elected by the direct vote of the nation, and voting is done by secret ballot. These are general rules; but there are some exceptions. Some persons have neither electoral nor eligible rights *e.g.* (1) lunatics and idiots, (2) insolvent bankrupts, (3) persons who have been deprived of public rights or whose public rights are suspended, (4) men in actual service in the army or navy, (5) the heads of noble families. Then there are also persons who have the electoral right, but are not eligible *e.g.* (1) officials of the Imperial Household Department, judges, public procurators; (2) members of prefectural assemblies, who cannot at the same time be members of the House of Representatives.

The proportion of the total number of members to the population of Japan proper is one to 130–140 thousand. The total number of members of the House of Representatives is 466.

Members of the House of Representatives receive, without exception out of the treasury, the annual sum of 3,000 yen and facilities over the railways as well.

In Japan universal suffrage is established at present; but few people exercise their franchise. The franchise is a right, and at the same time it is a duty, and everybody who has the franchise should

exercise it; but many neglect the duty of using it in the election of representatives. Therefore some statesmen demand that the exercise of the franchise should be made compulsory, and that men who fail to fulfil the duty of recording their votes should become liable to a legal penalty; others hold that the franchise should be restricted, and suggest that the age qualification should be raised to thirty, that only tax-payers should be allowed to vote, or that the receipt of relief should disqualify for the franchise. Such being the case the government itself as well as men of intelligence are busy with the education of the people on this point. We think that it is very likely to be the case in Japan, when we know that even English citizens neglect the duty of recording their votes in Parliamentary elections.

The House of Commons of the United Kingdom consists of members representing county, borough, and university constituencies. No one under 21 years of age can be a member of Parliament; government contractors, and sheriffs, and returning officers for the localities for which they act, are also among those disqualified. Women are eligible, and the first woman member took her seat in 1919.

The seats in Great Britain are at present distributed on the basis of one member for every 70,000 of the population, and the House now consists of 615 elected members.

In 1911, by resolution of the House of Commons, provision was first made for the payment of the salary

of £400 per annum to members, and in 1937 it was increased to £600. This provision does not extend to the House of Lords. Members of the House of Commons receive travelling facilities over the railways.

In the United Kingdom universal suffrage prevails, and under the Representation (Equal Franchise) Act, 1928, the qualifications for the franchise are the same for men and women.

In the United States the power of the House of Representatives cannot necessarily be said to be greater than that of the Senate; but the common people of the United States attach much importance to the former. The average American, in fact, does not even take the trouble to use the term "Congress" in its correct legal sense. By Congress he means, in most cases, the House of Representatives, although the Constitution explicitly states that it shall consist of both the Senate and the House (Munro, p. 261).

The House is composed of 435 members, who are elected for the term of two years. Representatives (senators also) are paid out of the United States treasury \$ 10,000 per annum.

In the election of members universal suffrage prevails in America at present. In early days, there were property qualifications, but afterwards this qualification was abolished, and the suffrage was extended to all white males, then to negroes, and then to women.

On the suffrage American people agree in saying:



“In a democracy such as the United States where sovereignty resides in the people, it follows that both citizenship and suffrage on the part of the great majority of the people are necessary to protect the people against their illegal subversion. The protection of personal liberty has always been a paramount consideration in the United States, and citizenship and suffrage are necessary to its preservation.”

## SECTION II

### THE POWER OF THE IMPERIAL DIET

#### 1 The Power of Legislation

The powers of the Imperial Diet which are clearly provided for in the Constitution may be summed up as five. The most important of all is of course that of taking part in legislation. That the Diet has its part in legislation is the reason why, in a constitutional government, it is an essential part of the political machinery. Professor Pottschaefer of Minnesota University observes that the legislative power is by far the most important of all governmental powers and that the determination of the policies that shall be promoted by law belongs primarily to the legislature (*op. cit.*, p. 151).

Every law in Japan requires the consent of the Imperial Diet, (Article 27). No bill, therefore, can become a law, that has not passed the Diet; nor can one become so, that has been carried in one House, but has been rejected in the other.

As to the question, what sort of matters ought to be settled by law, so that the consent of the Diet is necessary for the enactment, there are two theories. One is, that the provisions which define the rights and duties of the people or those provisions which relate to the personal liberty or the property of the people should be determined by law. The other is that the sphere of law ought not to be restricted to the consideration of rights and duties, or to liberty and property, and that it is futile to attempt, as is shown by constitutional experience as well as by scientific research, to lay down distinctions between law and ordinance by reference to the nature of the subject-matter; what comes within the sphere of law and what within that of ordinance, differ according to the conditions of the political development of each country. The Japanese Constitution adopts the latter theory as do also the constitutions of many other countries.

It is a matter of course that when a given matter is required to be embodied in a law by an express provision of the constitution it must be enacted by law, and that the modification of law can be effected by nothing less than law.

The legislative powers of the Japanese Diet are not so extensive as those of the Congress of the United States. The first section of Article 1 of the American Constitution provides that "all legislative power herein granted shall be vested in a Congress of the United States which shall consist of a Senate and

a House of Representatives"; and the following sections provide for the composition and organization of these two branches of the national legislature, and enumerate the powers which they may collectively and severally exercise; and section 8 of the article entitled "Legislative Power of Congress" enumerates 18 powers. Compared with these powers of the American Congress those of the Japanese Diet are much less in number and far inferior in quality. The Imperial Diet has no power to declare war, to raise armies, to provide a navy, to constitute tribunals, etc., all of which are found belonging to the American Congress.

Moreover, although the American Constitution mentions the "power of Congress," there is no such term as "power of the Diet" in our Constitution. We find there neither the word "power" nor the word "right" of the Diet. The Japanese Constitution says: "Every law requires the consent of the Imperial Diet," (Art. 37) instead of saying "The Imperial Diet has the right or power to give its consent to laws."

There may be material differences between the two methods of phraseology; but for the sake of brevity and convenience, and for the sake of easy comparison of our constitution with those of other nations, I will characterize the ability or capacity of the Imperial Diet as a form of right.

Both Houses of the Imperial Diet are to vote upon projects of law submitted to it by the government (Article 38). When the government makes the draft

of a law and submits it to the two Houses as a bill they are competent to pass it with or without amendment or to reject it. When a bill has been carried and shall have received the sanction of the Emperor it becomes a law.

Both Houses respectively may initiate projects of law. When a bill initiated by the one House and carried in the other with or without amendment shall have received the sanction of the Emperor, it becomes a law in the same way as in the case of projects submitted by the government. Although the Constitution thus allows both Houses to initiate projects of law, this initiative is almost nominal or ineffective, the real initiative in general resting in the hands of the government.

As a bill requires the sanction of the Emperor in order to become a law, a project of law that has not been sanctioned by the sovereign cannot be introduced into the Diet a second time during the same session. This must be so out of respect to the sovereign powers of the head of the state, and needs no explicit enunciation. A bill, which has been rejected by one or other of the two Houses, is not to be again brought in during the same session (Article 39); this is because the submission for a second time during the same session, not only infringes the rights of the Diet, but is likely to prolong the session for the discussion of a solitary matter.

Both Houses can make representatives to the government as to laws. (Article 40). They possess the

right of initiating a project of law as stated above, but were a House to draw up clauses of law according to the opinions of the majority, much delay would be very often caused in the progress of the debate thereon, while the draft itself would not be free from the defects of crudeness and lack of arrangement. It would be far wiser to rely for such work upon skill and experience of the commissioners of the government. The Diet is, therefore, allowed the option of either one of two courses of action, either to make a draft of a law and then bring it in, or instead simply to make representations of their opinion to the government as to the enactment of a new law, or as to the amendment or abolition of an old one; and, if the representation be accepted by the government, to leave to the latter the framing of the draft of the law.

## 2 Other Powers

### (1) Control of Administration

The Diet can make representations to the government upon any subject. It is the right and duty of the Diet to indirectly keep watch upon the administration, and it may make representations to the government as to the advantage or disadvantage, expediency or in expediency of this or that matter lying outside the sphere of legislation. Herein is included the right to put questions to the government and demand explanations.

(2) Right to Present Addresses to the Emperor

Both Houses of the Imperial Diet may respectively present addresses to the Emperor (Article 49).

To present an address is to approach the Emperor by presenting to Him a certain writing. The meaning of the word "addresses" covers the reply to an Imperial speech in the Diet, addresses of congratulation or of condolence, representations of opinion, petitions and the like. Written documents may be transmitted, or a delegation of the House may be instructed to ask for an audience, and present it to the Emperor. In either case, proper forms of respect must be observed. The dignity of the Emperor must not be infringed by any proceeding implying coercion.

This right of the Diet is said to be an important and effective one, but from the political point of view it is not important, at least this right is not so much exercised by the Diet as other political rights.

(3) Right to Receive Petitions from the People

Both Houses may receive petitions presented by subjects (Article 50). If they receive petitions, they are to be first examined and then simply transmitted to the government, or are to be transmitted with a memorandum containing the opinion of the Diet, with a request for a report of the government thereon. But neither House has any positive obligation to take petitions into consideration; nor has the government a positive obligation to grant the wishes set forth in

a petition. As regards petitions relating to legislative matters, although they need not be taken as direct projects of law, yet a member may in the usual manner make a motion in the House relating to the opinion set forth in the petition.

It is the right of the Diet to receive petitions, but some critics say that the right to receive petitions is of negligible importance.

#### (4) Control of Finance

Finance forms an important part of the administration, as it relates to the management of the annual expenditure and revenue of the state and has a close and intimate bearing upon the resources of the people. Accordingly, great importance is attached to it by the Constitution, which clearly defines the extent of the rights of the Imperial Diet in respect of consent and of control in regard thereto.

The imposition of a new tax must be determined by law (Article 62). It is a safeguard for the happiness of the subjects, that the consent of the Diet is required for the imposition of a new tax, and that such matters are not left to the arbitrary action of the government. Were it not for this constitutional safeguard, it would be impossible to ensure to the subjects security for their resources.

On the same principle, the modification of the rate of an existing tax must be determined by law, and the raising of national loans and the contracting of other liabilities to the charge of the national treasury

require the consent of the Diet. But this consent, in Japan, is not necessary for the levy of old taxes, although in the constitutions of some countries, it is provided that the vote of taxes shall have validity for one year only. It is, in Europe, generally held in theory as a very important principle, that all taxes should be yearly voted by parliament; but, this is only in theory, and even if it is put in practice, that practice is in many cases nothing more than a mere formality.

The Imperial Diet controls the finance of the government by means of an annual budget. The expenditure and revenue of the state require the consent of the Imperial Diet by means of an annual budget (Article 64). In the budget are estimated the expenditure and the revenue of each financial year, to show the limits which the administrator ought to observe; and it is an important result of constitutional principles of government, that the submission of the budget to the vote of the Diet is required for its consent thereto. In the same way, any and all expenditures exceeding the appropriations set forth in the titles and paragraphs of the budget, or those which are not provided for in the budget, must subsequently be approved by the Imperial Diet. In order to supply these deficiencies, a reserve fund is to be provided in the budget (Article 69). This is an effective method for making the administrative offices mindful of their duty of observing the limits imposed by it.



But it would be a mistake to understand that the budget is a law or that it is to be regarded as law. Although a budget, in some countries, is regarded as law, it is not law in Japan, but is simply a sort of gauge to be observed by the administrative officials for the current year. The usage prevailing in some countries, by which a budget is called a law has originated from the practice of giving the name of law to every matter carried through parliament; but it is not correct to say that everything that has been passed by the Diet ought to be so called. Those rules which, though they may have been passed by the Diet, relate to particular matters and have no general binding force, are different in their nature from law. Thus a budget requires the consent of the Diet on account of its special character and is not a law. Therefore law has precedence over a budget, which has no power to change that law.

To the general rule of the constitution that the consent of the Imperial Diet is required for the budget there is an exception in the expenditure of the Imperial House. The expenditure of the Imperial House is to be defrayed every year out of the national treasury, according to the present fixed amount for the same, and does not require the consent thereto of the Imperial Diet (Article 66).

The expenditure of the Imperial House is indispensable for maintaining the dignity of the Emperor, and to defray this expenditure is the first duty of the treasury. The amount of the expenditure is stated

in the budget; it is merely for the purpose of completing the sum total of public expenditure, and not for the purpose of submitting it to the deliberation of the Diet. The employment of these funds is an affair of the Court, and not subject to interference by the Diet; consequently, neither consent to this expenditure nor verification thereof by the Diet is required.

In case an increase of the funds is proposed the consent of the Diet is necessary. Ito, commenting on this constitutional provision says: "The reason is that the affair in question has a close relation to the taxes contributed by the subjects and that, therefore, it is to be submitted to the deliberation of their representatives." Yet this reason alleged by Ito is not satisfactory (Ito, p. 128).

It might happen that a session of the Diet closes before it has proceeded with the budget, and then it will be said, "The Diet has not voted on the budget," or it might happen that in either of the Houses the budget has been rejected, then it may be said, "The budget has not been brought into actual existence." In such cases the result will be the paralysis of the machinery of administration, sometimes in extreme cases fatal to the national existence. What should the government do in such cases?

In a certain country the government carried out its financial measures at its discretion, by overruling the attitude of the legislative assembly, but such a practice is not proper from a constitutional point of view. Therefore, the Japanese Constitution, after

considering the nature of the national polity and the matter from a theoretical standpoint, has provided that the budget of the preceding year shall be adopted as a measure in the last resort under circumstances like those above mentioned.

The Diet controls the finances of the government by means of the final account, as well as by budget. The budget is the first process of the yearly financial business, while final accounts are the last part of the same. Thus there are two ways in which the Diet can exercise control over financial operations; one is a preceding, the other a subsequent control. By preceding control is to be understood the power of giving or of withholding consent to the budget for the coming fiscal year, while by subsequent control is meant the power of verifying the statement of accounts of the past fiscal year. For submission to subsequent control the government must lay before the Diet the financial accounts that have already undergone verification by the Board of Audit together with the report thereon by the said Board.

For the examination of the financial business of the government, the Board of Audit must possess an independent character. Accordingly its organization and function, like those of judges, is to be defined by law and placed beyond the reach of administrative ordinances. The Board of Audit possesses an independent character, but the real influence of this Board is very small.

(5) Several Rights of the Diet

The Diet has the right to consent to the intended arrest of members, the right to investigate the qualifications of members, to draw up rules necessary for the internal management of the Houses, to inflict disciplinary punishment upon members, to grant furloughs and to accept resignations. These are all matters that belong to the internal management of each House and of rather a trifling nature. How attenuated do we find these powers when compared with those of the American Congress!

As to the rights and privileges of the individual member of our Diet, they are, generally speaking, less than those in other countries. Our members have freedom of speech within the House and freedom from arrest without the House, but there are many exceptions. They have the right to put questions to the government, and the right to introduce subjects for discussion and in addition some special rights are conferred on them by special laws; but they are not worth mentioning.

### 3 Critical Remarks on the Power of the Diet

We have thus far shown the power of the Imperial Diet, and have seen that it is a fairly extensive one; but it is not so large as that of American Congress or the British Parliament.

The Japanese Diet may initiate legislative measures like the government, and no law can be passed without

the consent of the Diet; but at the same time the Emperor, who exercises the legislative power with the consent and advice of the Diet, has the prerogative of giving sanction to laws, and has an absolute veto over legislation, a veto which is not a nominal one as is the case in some countries, and is exercised often on proper occasions.

It is true that no tax can be imposed without the consent of the Diet, and that the annual budget must be approved by it. The Diet, however, has not the complete power of the purse, for certain matters such as the control of the salaries and expenditure of the Imperial House, are outside its jurisdiction; and if the Diet refuses to pass a budget, that of the preceding year is to be kept in force as the standard.

The Diet has the important privilege of interpellation or of putting questions to the different members of the cabinet. Both Houses may address the Crown, and by these means may present grievances and virtually impeach a minister; but the cabinet is not responsible to the Diet, and were it not for public opinion the Emperor might almost dispense with it. Moreover, the Upper House has in many matters an effective check upon the Lower House, and since the former is conservative, it can prevent any radical measures from being enacted by the latter (Latourette, p. 141). Such are the observations made by foreign writers on the power of our Imperial Diet and therein we find much truth.

Regarding financial bills, the right of the House

of Representatives is exercised before the House of Peers exercises it, but constitutional democracy has not yet developed to such a point as to give the entire decisive authority concerning financial bills to the Lower House. As no taxes or other revenue or expenditure can be paid into or out of the treasury without Parliamentary consent, the financial system appears so democratic as to endorse the right of the Imperial Diet to reject or alter the fixed amount or otherwise modify expenditure, but it is not really so democratic. The struggle between the finance minister and the ministers of various other departments, especially those of the army and navy, are very delicate and significant in Japan. The traditional influence of the military and the constant fear of the resignation of the service ministers have been and are the first consideration of any government.

Again some foreign writers point out that in Japan the ability with which a prime minister can reconcile the competing claims of the various ministers during the Parliamentary discussions and thus present an agreed budget to the Diet is generally regarded as the measure of his political and administrative capacity, and that the subsequent handling of the Diet itself is regarded as of much less importance. This remark on the power of the Japanese Diet is partly true but partly not. The prime minister finds much difficulty in bringing about a compromise of expenditure between various departments, especially with those of the army and navy; but the Diet often rejects

or alters the amount which was fixed by the prime minister and other ministers, and thus exercises its financial control.\*

Our Diet has no share in the sovereign power, though it is empowered to take part in legislation. It has power to deliberate upon laws, but no power to determine them. Although the latent force of democracy is based on legislative liberty as a factor of sovereignty in the Western system, the legislature in Japan is an agency of the Emperor's sovereignty; that is, the Diet which consists of all classes of the subjects is an organ of consultation on the framing of laws and the conduct of the bureaucratic administration.

In Japan for years struggles have been waged to make the ministry responsible to the Diet, especially to the House of Representatives, and the House was often dissolved because of the tension over this situation, and ministers have come and gone very frequently on that account; but ministerial responsibility to the Diet has not been established, and no constitutional amendment has been made therefor.

Sometimes the Diet, the House of Representatives very strongly opposes the government, and if there is not to be a deadlock in the administration, it becomes necessary for the cabinet to have the support of a party, if possible the majority party, in the Lower House. The cabinet does not, however, need to seek the ratification of all its measures, and it might insist on remaining in office when backed only by a minority.

To obtain this support ministries frequently have gone the length of corrupting individual members of the Diet by offering offices or by bribery. Although this practice was made notorious in England by Walpole and also has not been unknown in the Occident since that time, it is a very bad practice; therefore it is not in Japan resorted to at present.

The good point of the Imperial Diet is to keep itself very quiet, and help the government in time of war with foreign nations or at any time of emergency. At the time of war with China and with Russia and during the first great European War when Japan fought on the Allied side, the Diet was firmly united in its cordial support of the government. This is the case also at present when Japan is making war in China. In these emergencies the spirit of Japanese patriotism is always stronger than factional interest; partisanship is buried in the enthusiasm of making efforts to defeat the common enemy and will not again appear until after peace is restored. Strifes would be resumed when the external danger is past, yet during the danger the Diet makes a common cause with the government.

### SECTION III

#### THE POWER OF THE ENGLISH PARLIAMENT AND THE AMERICAN CONGRESS

In England, the power of Parliament is very great much stronger than the Imperial Diet of Japan.



In the early days Parliament did not make laws, but was merely a tax voting body. The King called it in session only when he needed money. But Parliament's control of taxation in time led to its great power. Gradually the members would grant the King money only when he was willing to redress the grievances of the people which they pointed out to him. Thus Parliament came to have more and more power to make laws affecting the welfare of the nation.

A great step forward was taken in the procedure by bill, under which, instead of merely petitioning the King to issue a law, Parliament framed the law itself, leaving to the King only the choice between signing or refusing to sign. After this it was no longer possible for the King, after promising to grant a petition, to neglect to issue the promised law or to modify its terms. Afterwards there was added to legislation by bill the understanding that the King would choose his ministers in accordance with the will of Parliament and that he would act only upon the advice of these ministers. Then the victory of Parliament was complete, and now the English system of government is based upon the idea of the supremacy of Parliament.

Andrew remarks in his "Twelve Leading Constitutions" (p. 162), that the British House of Commons has no rival in age, for nearly six centuries have run since the Commons began to function as a separate chamber; and that it is not age alone that gives the House of Commons its high place among the law-

making bodies of the present day; and that it is the classic example of a legislature with virtually unlimited authority, its powers being unique in their range and in the absence of constitutional restraint.

The chief function of the House of Commons is to protect the people's rights and to ensure their liberties against oppression; it was for the attainment of these ends that the House developed. The House has supremacy in law-making, it controls the finance of the realm, fixes the jurisdiction of the courts, and dominates the action of the Crown.

In the United States the Congress has great authority. Its most obvious function is to make laws. All legislative power is vested in a Congress consisting of a Senate and the House of Representatives.

Besides, the Congress has to do many things which are enumerated in the Constitution; politically speaking, it is said that one of the most important of the functions of the Congress is to call the attention of the public to the policies and actions of administrative officers and to subject those policies and actions to criticism; and another is to conduct investigations into alleged abuses on the part of the administration. Some functions that played a very little part in the early history of the Congress have grown greatly under modern civilization, so that the Congress occupies a somewhat different position from that which the framers of the Constitution had in mind.

The exclusive power to declare war is vested in the Congress. This subject was earnestly discussed

by the framers of the American Constitution, and they wisely concluded that the Congress shall have the power to make war or peace in any way it considers wise. The power to declare war and peace enables the Congress to do anything necessary for preserving the welfare of the nation.

But in the United States, even extreme war measures must be directed towards saving the Constitution. It takes precautions against a possible military dictatorship by providing that no appropriation of money to raise and support armies shall be for a longer term than two years. The Congress is not at liberty to grant permanent funds to the President for the support of an army. As the American Constitution does not define the limits of the war-declaring power of the Congress, by giving it the exclusive power to declare war, various difficulties may arise. In Japan, on the contrary, as the Emperor declares war and makes peace and His right of doing so is absolute and subject to no limitation, no difficulties can arise on such matters in our country.

We have stated above that the English Parliament and the American Congress may be said to have supreme power in their countries respectively. Yes, they have that power both in theory and practice; but they are losing that power before the growth of the executive. In recent years, there have been indications of a decline in the importance of legislatures. The wave of executive aggrandizement, though it has risen to extreme heights in countries which have sub-

mitted to dictatorship, has not been confined to them alone. In America and in Great Britain, the trend of the last fifty years, especially for the last twenty years has steadily expanded the scope of governmental activities. The ravages of depression and the life or death necessities of war have imperatively placed upon the government the necessity for remedial action. Since action must be taken, it is clearly the performing branch, the executive, on which falls the greatest burden. Equally clear is it that, when action is to be the prime requisite, a dictatorial government possesses the advantage of efficiency, being untrammelled by Constitutional scruples.

Therefore, both English-speaking countries have concentrated in the hands of a single officer the leadership in both legislation and administration.

The British Prime Minister for all practical purposes has become the legatee of the authority vested in the Crown. The tendency of recent Constitutional development has been for power to be transferred from the House of Commons to the Cabinet, and from the Cabinet to the Prime Minister. It is true that the government of the day is dependent for its existence on the support of the majority of the House of Commons, but a prime minister can smother discontent in the rank and file of his party by threatening to resign or to dissolve Parliament, in which case his supporters would be faced with the certainty of expense and trouble, and the possibility of defeat at the elections.

Such is a statement of an English professor, Montague (p. 251), regarding the prime minister of the United Kingdom, and we can not but trust this statement. One of the members of the Asquith Government said, "There was never any question of the Premier's being actuated by his colleagues, for there has never been any voting in the cabinet at all; they were true to advise the prime minister to the best of their ability, and generally they gave different advice; but there was no reason why he should take their advice, or why he should not decide on a policy which no one advised. It was idle therefore to refer to the cabinet's policy; policy was the policy of the prime minister." War conditions seemed to have exalted the prime minister to a position of pre-eminence which was incompatible with the principles of cabinet government. This was the case in England in the time of the first Great War, and it is true at the present war time.

In the federal government of America, many presidents have exercised as much influence in the Congress as in the branch of government accorded to them by constitutional theory, and in recent years, the executive is being looked to more and more to take the leadership in legislation, while many other countries have witnessed the establishment of dictatorship. West, an American professor, after pointing out this decline in importance of the Congress says that, it may be due to transient circumstances, and probably is only temporary. But we think that it

will be of some long duration.

In the Soviet Union, the Supreme Council is in theory the most important and at the same time the most powerful body in the country; but in practice it is useless as there exists in the Soviet Union the dictatorship. It is said that Soviet democracy achieves a strong, efficient government in exactly the reverse direction from Fascism. Concentration is attained by giving into legislative hands supreme unified power. All power—legislative, executive, judicial—is concentrated in the Supreme Soviet, a Supreme Council, a body of more than a thousand representatives elected for the four-years' term by all citizens of eighteen years and upwards through universal, direct and secret ballot, and recallable by their constituents at will. All legislative power is vested in this body; no executive or court can veto or annul its laws. This Supreme Soviet appoints the highest executive officers, the people's commissars supervise their work, and remove them at will. It also appoints the highest judiciary, which is thereafter independent for a fixed term of office. The whole united power of the state in all its functions is thus concentrated in one body of representatives directly elected by and recallable by the people. But this powerful Supreme Soviet is in reality at the mercy of the dictator.

There is a political device called the referendum. The referendum is an appeal to the people on a single important question. It has been advocated as a means of securing the considered opinion of the nation on a particular point. Its supporters maintain that a referendum might be used with advantage as an exceptional measure with the approval of the Diet when one House and the other are at variance on a question

of supreme importance, or when the public opinion is sought on a vital issue. A referendum would enable an elector who finds difficulty in voting for the whole of a party programme to vote on a matter in which he is specially interested.

Some who are opposed to the referendum say that the advocates of this political instrument fail to realize how difficult it is to define an issue so plainly as to admit of a simple answer, yes or no; political problems are so complicated that assent or dissent can usually be recorded only with such qualifications as must seriously diminish the value of the answer. They add that the cost of a referendum would be very heavy for the mere solution of a single pressing problem.

The referendum is carried out only very rarely, and party leaders have not given a strong lead on the questions (Edward, p. 127).

We need no referendum in Japan, as it may be needed in other countries, where the referendum would be a substitute for the veto of the crown, the veto or assent of the sovereign people; but in Japan the Emperor's decision is final in all cases.

#### SECTION IV

##### POLITICAL PARTIES IN JAPAN

Where the Diet exists political parties also exist. In Japan there have been until this year (1940) two important parties and some three or four minor ones.

Soon after the Meiji Restoration (1868), there was an agitation for constructing political parties. In 1879 the agitation was renewed, chiefly on the initiative of Itagaki, and meetings were held in many parts of the country for the purpose of discussing the question. In March 1880 a general meeting of the leaders of the movement was held in Osaka, and a new organization was formed for the purpose of active propaganda; and under the leadership of Itagaki there was formed an association called Jiyûto (Liberals) which was the first political party in Japan. It was composed not only of men who held advanced opinions, but of many others who had or thought they had personal grievances against the government through their loss of office.

In 1881 Okuma, who had held a high position in the government and was an authority on financial matters, seceded from the administration, and with his adherents organized an independent party calling themselves Shimpô-to (Progressists) who not only stood aloof from the Liberals but even assumed an attitude hostile to them, a fact which proves that the first political parties in Japan were formed not according to any avowed political principles but around leaders who had sufficient personal influence to have a following. We may roughly say that the Seiyû-kai has come from the Liberals, and the late Progressists were succeeded to by the Minsei-to, and that each of these parties is not conducted on principles but is a gathering of followers of a central figure as their pre-



decessors were fifty years ago.

But we think that such is the case not only in Japan, but also in many other countries, even in the United States, where parties exist in general not in accordance with principles but are rather formed around leaders. In fact, at present there are in many countries no great principles, for the sake of which political parties should fight each other, divided into two camps.

In Japan there has arisen of late an association, which even if it is not a political party in its strict sense, has nevertheless to do with politics,—that is, the National Socialist party. This party, supported by the bureaucrats, some leading capitalists and others military men, glorifies the Japanese spirit and advocates an “Emperor and Subjects” system. Its planks are (1) The maintenance of the national polity, that is, the patriarchal relationship between the divine monarch and his subjects; (2) the establishment of centralized power under the Emperor and the abolition of parliamentarism; (3) abolition of the established parties; (4) abolition of the present capitalist economic system, and establishment of state-controlled economy; (5) anti-communism; (6) insistence on a firm foreign policy; (7) recognition of state sovereignty and social determination.

With regard to political parties, there exist the one party system, the two party system and the multiparty system. Among these three, the two-party system is the best. Neither the one party nor the multiparty system is advisable.

In England, in early times, the Puritan party which

developed in opposition to the government gained ascendancy and claimed exclusive control, eventually calling forth the Cromwellian dictatorship. It was only after violent revolutionary experiments that the English people settled down to a mutual acceptance of each other's political viewpoints. Thus, as far as England is concerned, we might say that the two-party system developed out of the one-party predominance.

On the other hand, the continental democracies have developed the multiparty system, in which parties grow up around individual leadership, or around programmes of so specific a nature that they appeal to only a portion of the electorate. With such a system, the legislative body usually contains so many parties that no single one controls a majority of votes; and majorities are obtained by coalitions among these groups and in turn these coalitions fall apart. Thus, stability in government is impaired. We doubt whether what West has said is true. "It is particularly in countries with multiparty systems that the modern dictatorship, based on a single-party system, has grown up" (West, p. 437).

The two-party system is healthy and is well adapted to constitutional states. Where this system exists, each party presents a programme that is the result of compromises among its membership. It calls for a degree of flexibility by which those individuals are brought together, who hold in general to a broad programme of action, and compromise upon details

and thus present a united front upon essentials.

Great Britain adopts the two-party system in general, although there are occasional departures from that, there being three major parties in recent years.

The United States adopts the two-party system like Great Britain, but here the parties have not been far apart in their opinions as they were there, and specific issues are in dispute rather than fundamental principles. Therefore there arise many complaints among American citizens, such as that the parties do not represent policies which are radically different, that elections are sham battles which would lead to much the same result whether one party or the other should win. Professor West of Washington University replies to this complaint by saying that "This may be a reason for gratification. When a deep cleavage in opinions among the electorate occurs, when the country is divided between radicals on the one side and conservatives on the other, parties arise to represent opinions. When parties are not far apart, we can feel reasonably certain that the country is in the main united upon fundamentals, we may not like the artificiality in sham battles, but sham battles are at least much better than bloody revolutions" (West, p. 437). Right or wrong, the condition of the political parties in Japan has been just what West said with regard to the political parties in the United States; but the present writer does not like sham battles between the parties.

Recently (the summer of this year) the Seiyu-kai,

the Minsei-to and other political parties in Japan have disorganized themselves on their own initiative by declaring that they do not suit the present situation in Japan. As a consequence there is at present no political party in Japan, and instead of those parties there has arisen a "national association in a new political and economic structure of the country," the nature and character of which are not yet definitely known to outsiders.

## SECTION V

### THE POLITICAL POSITION OF WOMEN IN JAPAN

The political position of our women is not high. Not only do we find no single female member either in the House of Peers or in the House of Representatives, but women have no capacity for election, and they do not enjoy the franchise. But Japanese women do not so much desire those rights as the women in the United States and Great Britain do. The majority of women, both high and low, do not feel much interest in politics; and the politicians also who advocated universal suffrage did not cry for women's franchise; they shouted only for men's.

"The women's association which was founded for the purpose of gaining political rights for women and has been continuing its work more than ten years has been recently disorganized, as the members have deemed the step to be expedient, for they judged that such an association does not suit the present condition in Japan.

Women are not only excluded from the Diet, but they are also not allowed to become members of political associations.

The persons who are disqualified by law for joining political associations are as follows:

1. Military and naval men in active service;
2. Police officers;
3. Priests and teachers of religion;
4. Teachers, students and pupils at schools;
5. Females;
6. Minors;
7. Persons who are deprived of civil rights;
8. Aliens.

In the above enumeration we see how for men the exceptions are specified; on the contrary, for women the prohibition is wholesale; the one word "females" covers all. Women are, as a whole, treated in the same way in this point as minors, aliens and persons who are deprived of civil rights; and are placed outside the pale of political associations altogether. But the majority of our women do not complain of this; and they do not aspire to obtain the same political rights with men. They do not care much about political rights; they have no political ambition. Japanese women in general are very submissive. In towns they are good domestic mistresses, keeping the house for their husbands and children in good order, and in the country-side they labour early and late in the fields together with men, each content with their present condition. I repeat that Japanese

women are very submissive; the wife obeys the command of her husband, young girls are content to be placed below young men; and both men and women are very happy.

The above is a general statement regarding Japanese women. If we are to give a fuller account we should divide our women into various grades. We may divide our people into three grades, higher, middle and lower, and we may accordingly divide women into three grades. Among these three grades, women of the lower class have the same position with men if not legally, yet practically, in their domestic or in their own social circle. Men and women of the middle class are not equal, women are under men, the wife as a rule obeys her husband. Women of the lower class insist upon their rights and often contend with their husbands, but women of the middle class do not. As to those of the higher class, wives are absolutely below the husbands, for there the position of women is far below that of men. In a word, the higher the rank of the family in society the lower is the position of women; and we may say that in fact the rich man's wife enjoys fewer rights than a poor man's wife; in the high class the wife absolutely obeys or is taught to obey the command of her husband.

Such was the condition of women in Japan; and this condition was brought about artificially. At the beginning of society men and women were equal also in Japan, as in other countries; but afterwards they were made unequal. Education and other social in-

stitutions made men and women unequal, making the latter utterly dependent on the former.

Sir Charles Elliot who once witnessed in a Japanese railway train Japanese husbands sitting while letting their wives stand wrote in his "Letters from the Far East," (1907, p. 128) thus:

"Very good for domestic discipline, no doubt. Chivalry does not flourish in Japan; women are treated somewhat like children and kept in their places. Even in the well-to-do classes women can travel alone, and in lower classes the sexes associate with freedom, if not with equality."

At an early period in Japanese history, Chinese civilization penetrated into Japan, first through Chosen and afterwards direct from China; and it was chiefly the doctrines of Chinese moral philosophy that changed the primitive state of comparative freedom and independence of women and placed them in an abnormally inferior position.

The teachings of Confucius are:

1. Women are naturally inferior to men;
2. Education of women should be restricted to reading and writing;
3. Woman's primary duty is obedience;
4. Men and women (above seven years of age) should not sit together;
5. A woman shall have no voice in selecting her husband;
6. The husband shall have the absolute right to rule;
7. Between husband and wife let there be a proper distance.

Hershey remarks that these teachings of Confucius are barbaric and contemptible to the last degree (Hershey, "Modern Japan," 1919, p. 23). But Japanese people were taught this morality and thought it good.

Our great moralist Kaibara sums up the established womanly virtues as follows: "It is the chief duty of a girl living in the parental house to practise filial piety towards her father and mother, but after marriage her chief duty is to honour her father-in-law and mother-in-law, to honour them far more than her own father and mother, and to love and reverence them with all ardour, and to attend to them with every practice of filial piety. A woman must look to her husband as her lord, and must serve him with all esteem and reverence. The life-long duty of a woman is obedience." The Chinese doctrine of the personal obedience of women to the other sex is expressed in the precept of the three obediences, "obedience, when unmarried, to the father; obedience, when married, to the husband; obedience, when widowed, to her son."

Then, Buddhism and feudalism contributed to the keeping of women in a state of dependence. Buddhism regards woman as an unclean creature, a temptation or snare to virtue and an obstacle to peace and holiness. Feudalism disdained anything effeminate, regarded woman in the light of a temptation, an obstacle to courage and faithful performance of duty; and although she was treated in Japan sometimes with kindness and consideration far above that



received in other Asiatic countries, yet she did not enjoy that romantic homage which the gallant knights of Mediaeval Europe paid to ladies.

Those three factors, Chinese philosophy, Buddhism and feudalism, combined to place the Japanese women in a state of dependence. She should not become the head of a house or guardian of her own child; she could not adopt a child in her own name; she could not hold property for herself, nor make a contract in her own name: in short she had no independent status and was excluded from the enjoyment or exercise of almost all political rights.

Such was the position of Japanese women for more than 1,000 years down to the time of the Meiji Restoration in 1868.

Since the Meiji Restoration European civilization has been introduced, Western doctrines have superseded Chinese, and Japan has become a member of the civilized world; and as one of the consequences, a great revolution has come over the social and legal position of woman; she has become what may be called a legal woman, she has become an independent person, and she is the subject of rights and duties as well as man.

The Japanese Civil Code proceeds upon the principle of equality of the sexes, and makes no distinction between man and woman in the enjoyment and exercise of private rights as long as a woman remains single. When she is married, her state of coverture obliges her to obtain the permission of her husband

in doing certain acts, which may involve grave consequences in their conjugal life; but even in regard to these acts, she cannot be considered as labouring under legal incapacity.

In this way, the position of Japanese women has become much higher legally and socially than it was before; and we think their position will be much improved by and by. At present, female education has spread throughout the country; in 1913 women began to invade the universities; many Imperial and private universities accept now female undergraduates who attend lectures along with the male students. Moreover, the democratic movement which once overflowed the world has brought to the Japanese women a great mental reform and encouraged them to take the position which they ought to have.

Japanese women are not unfit to take their proper position in society; they are really fit to have it. In fact, in ancient times Japanese women occupied high positions. From all accounts we recognize that in ancient times our women played an important part in the political life of the country, many leaders and even sovereigns being chosen from among them.

It is interesting to note that, up to the Nara period in Japanese history, when private property was established under the family system, women had equal authority with men, and moreover often constituted an intelligentsia, as is strikingly illustrated in the work of Lady Murasaki, author of the famous *Genji Monogatari*. But since the private property system

was established, the patriarchal family system caused a decline of the position of women. From that time onward the system brought about the disappearance of their rights.

Brinkley remarks in his "A History of the Japanese People":

"There is evidence to show that in the prehistoric age a high position was accorded to women and that their rights received large recognition. The facts that the first place in the Japanese pantheon was assigned to a goddess; that the throne was frequently occupied by empresses; that the females were chiefs of tribes and led armies in campaigns; that jealous wives turned their backs upon faithless husbands; that mothers chose names for their children and often had complete charge of their upbringing—all these go to show that the self-effacing rank taken by Japanese women in later ages was a radical departure from the original canon of society."

In Western states, woman has obtained her political rights in late times. In England, a century ago there was no room for women in the control of public affairs, and it is in view of the war work done by women in the World War that the franchise was given to them. The Representation of the People Act 1918 gave the vote to women above the age of thirty, and a special statute of the same year entitled them also to sit as members in the House of Commons. In 1919 the Sex Disqualification (Removal) Act laid down the general principle that women, whether married or unmarried, were to be deemed fit to exercise any public function, and threw open all offices and public

functions to women, admitting them to juries, to any incorporated societies, including the Inns of Court, to the civil services, subject to regulations limiting entry in certain cases, and to the office of solicitor on conditions analogous to those affecting men. The universities were authorized to admit women to degrees, notwithstanding any provision to the contrary in their statutes or charters. In 1928 another franchise reform abolished the age limit and other restrictions, so that women now receive the vote on exactly the same terms as men. No act yet avails to entitle a peeress in her own right to sit in the House of Lords.

In the United States of America the agitation for equal rights for women began early. In 1848 the first Women's Rights Convention was held at New York, and it passed resolutions demanding the vote for women, equality with men in education, equality before the law and in earning a living. In 1879 the American Woman's Suffrage Association was formed and an amendment of the Constitution was drafted and presented to the Congress. About 1910, efforts to secure woman's suffrage were beginning to be put forward with great vigour. By 1916 woman's suffrage had become one of the leading questions. This plan was aided by the adoption of woman's suffrage by the State of New York in 1917. By a large number of votes the proposition was acclaimed in several other Eastern states, above all on account of the very conspicuous services rendered by the women to the

country during the World War. The nineteenth amendment of the Constitution which gives women the suffrage was proclaimed in time to enable them to vote in the presidential election of 1920. It runs: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." Johnson says of this woman's suffrage, that woman's suffrage has come as a natural development of the growing independence of women, it was not an artificial creation as was the case with negro suffrage. It would seem that there is little difference between the sexes in the matter of the use of the ballot (Johnson, "Government in the United States," 1933, p. 148). He continues, "The fear in some quarters that women would purify politics has unfortunately not been realized. Wisdom and folly, sentiment and sense, integrity and perfidy are not distinguishing sex characteristics."

Indian women have franchises which Japanese women have not; the new Indian Constitution makes provision therefor. In drafting the constitution the Statutory Commission commented on the necessity for improving the status and extending the influence of women in India. The Commission observes:

"The woman's movement in India holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due parts as educated citizens."

The provisions of the Act relating to women's franchise have done much to further the realization of those aspirations. Under the Act, the franchise has been extended to all women, (1) who possess a property qualification in their own right; (2) who are the wives or widows of men with a property qualification; (3) who are the wives of men with military service qualifications for the vote; (4) who are pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers or members of the regular forces or of any British Indian police force; or (5) who have an educational qualification.

Women qualified to vote, otherwise than in respect of a property qualification in their own right, are required to make an application to be placed on the electoral roll (Eddy's "India's New Constitution," 1935).

Japanese women do not aspire to have such franchise as is given to Indian women by the Indian Constitution, nor do they think Russian women happy who are given far more rights than given to women in England, the United States or any other country in the world.

In the Soviet Union, equal rights for women are guaranteed by affording to them equally with men the right to work, the right to payment for work, the right to rest and the right to social insurance and education. We see also that in the Soviet Union woman's right to economic security is much more than mere equality of opportunity with man. The

fulfilment of her peculiar social function of maternity carries with it the right such as that by which the male official is repaid all the travelling or other expenses that are incidental to his official duties.

Our Japanese women are not envious of the women in the Soviet Union who have so many rights as stated above.

## CHAPTER XI THINGS JAPANESE

### SECTION I

#### THE NATIONAL FLAG OF JAPAN

##### 1 National Flag in General

National prestige follows the flag; the more prosperous a nation becomes, the more glorious waxes her national flag. This is due to the fact that the flag, the emblem of national prestige is, as it were, a crown which a nation wears at sea (if I may so express it), because, on the high seas which are common to all nations, ships salute each other by dipping the flag, the symbol which denotes not only the nationality but also the glory of the nation to which the ship belongs. In the course of his address delivered in 1901 at San Francisco, when a merchant vessel was launched, President McKinley of the United States made a remark that trade follows the flag, a remark which fully endorses my view. I do not suggest in the least that the national flag is unnecessary on land; I only point out that freedom of navigation on the high seas induced every ship to designate her nationality by some means or other, inasmuch as international politics and the utility of maritime trade would otherwise be impaired in no small measure. Thus all nations have adopted their national ensigns mainly in connexion with the navy and the mercantile marine. Every nation began to see to it with jealous care that, on the one hand, the



hoisting of the flag should be enforced on all its ships, a severe penalty being inflicted upon those who would disregard the regulation; and that, on the other hand, any vessel sailing under another country's flag should be subject to capture or otherwise punished.

The question may suggest itself: What is a flag? There are more than half a dozen Chinese ideographs for "flag," all of which indicate a conspicuous object, usually square or oblong, used to mark out buildings such as inns, pavilions and two-storeyed gates. With regard to the acceptation of the word *hata*, flag, in ancient Japanese, we find mention of it in a commentary on the *Mannyoshu* (one of the anthologies of the poetry of the Nara period: VIIIth century (710-793 A.D.)). The commentary says that the word *hata* is a combination of *ha*, long, and *ta*, hand or arm, so called from the fact that a flag, when hung out, looks somewhat like the extremity of a long human arm. Be that as it may, I do not intend to clarify the meaning of the word flag in that way here.

Every family or clan has its own heraldic bearing. It stands to reason, therefore, that a nation should possess an emblem of its own, and this emblem is the national flag. The development of the idea in regard to the state gave rise to the notion of the national flag. A change in the idea of the state affects the meaning of the flag. A community of people come to feel the need of its own flag, but not till they have made a sure and strong combination to hold their ground against another group of men similarly combined.

However, no nation seems to have possessed its own national flag, so long as it was preoccupied with civil strifes, in which several strong factions of people were waving their standards in opposition to one another, while the notion of foreign policy remained undeveloped. Thus in our country different families or clans had adopted different flags. Notable among these were the red flag of the Taira family; the white one of the Minamoto; the *nakaguro* (literally, middle black) flag of the Nitta; the *nakashiro* (literally, middle white) flag of the Ashikaga; the *san-rin* (literally, three fish-scales) flag of the Hojo; and the *kikusui* (literally, chrysanthemum on the water) flag of the Kusunoki. Virtually the same state of affairs prevailed in Great Britain, France, Germany, etc., in the days of mediaeval feudalism, when the national flag was either conspicuous by its absence or, if it existed, was of little consequence. In those days great value was set upon the heraldic devices of different families. Then came the time when every nation completed the unity of the whole country and thus became strong enough to face any other nation. At this stage of national growth there came into being the banner of a commander-in-chief and the standard of a sovereign; and these ensigns led all the people of the country. Therefrom what we now call the national flag probably had its origin.

As to the origins of the national flags of European powers, it is difficult to ascertain them; their origins vary with different nations. What is certain is that

the Crusades afforded an opportunity for the development of the notion of the national flag. The Crusades were the Christian military expeditions,—a series of religious wars which the Christians of the West, raising the standards of the cross, made against the so-called infidels of the East. In order to distinguish his own army from another's in the medley of the crusaders, each leader who was a sovereign, or a king's son, or a general, as the case might be, must have felt the necessity for some conspicuous object which would serve as a rallying-point. Such necessity gave a strong impetus to the idea of the national flag. The notion of the flag was furthered by the numerous wars and negotiations for alliance, which the centuries following the Crusades witnessed in Europe. Above all, that series of struggles for the command of the sea in which various European nations engaged from the fifteenth down to the eighteenth century went far to inculcate in the nations the idea of the national flag.

During these struggles Spain, Portugal, Holland and Britain advanced at different times claims to dominion over the high seas. Some contended that the high seas should be under the sway of the Dutch flag, and others advocated liberty of the seas; while the British government adopted, and tried to carry out by force, a policy of domination over certain areas of the seas. John Selden asserted the right of such appropriation in his "Mare Clausum." Ships sailing under the British flag were allowed to make

free use of the high seas, while ships of other nationalities were demanded to strike their flags by way of acknowledgment of the British supremacy. How should the other nations readily acquiesce in such a claim? Several nations made common cause against Great Britain. After futile negotiations a series of wars ensued, with the result that Britain was induced to withdraw her claim. Thus it became obvious that the relationship between the flag and sea-power is very close. Ever since then the idea of the national flag has become impressed more deeply than ever upon all nations. At present the notion is current all over Europe.

Upon returning home from Europe towards the end of 1900 I found a lack of the notion of the national flag among our people. Even educated people, let alone the lower classes, were not well acquainted with the bearing of the flag upon national prestige. Our criminal law has not yet any provision for the punishment of any one who insults the flag of a foreign country, only the recent revision has inserted one clause concerning the matter. Our national flag is not highly respected by the people at large, who have neither a festival nor a song in honour of the flag. The country folk erroneously look upon the flag as a mere decoration to be used on occasions of festivity. This is a matter for regret. But the people are not to blame. The main reasons for this regrettable indifference may be found in the geographical situation of the country and in its age-long policy of

seclusion. Far be it from me, however, to countenance this indifferent attitude of our people towards the national flag. Any nation which makes light of its own national flag must necessarily be doomed. Disrespect to the flag indicates that the nation's foreign policy must be weak-kneed and submissive.

Our history tells us that before the closing years of the Tokugawa period there was no event which would have necessitated the adoption of the national flag, excepting the two expeditions to Korea, one by the Empress Jingo and the other by Hideyoshi. Even these two expeditions can hardly be said to have given rise to the national flag. The Empress Jingo's expedition was an event of remote antiquity, concerning which it is not easy to sift fact from legend. Judging from what we know, however, it is doubtful whether anything like the present national flag was then flown. Hideyoshi's expedition was not necessarily a war which promoted what we now understand by the words "state consciousness," and so we may safely assume that our national flag cannot have existed in those days. It is true that there was a ship called *Nihon Maru*, but there was no *Nihon Ki* (the flag of Japan). It was a few years before the Meiji Restoration that what we now legally and formally call our national flag came into being. Great Britain, America, and France, be it remembered, had adopted theirs long before our country. The Union Flag was first hoisted on the first of January, 1801, by a special act of Parliament; the Stars and

Stripes on the fourth of April, 1818, also by a special act of Congress; and the Tricolour somewhere about the time of the Great Revolution. Therefore the official adoption of our national flag was only a little anterior to that of the German Tricolour which came into being in 1867 when the North German Confederacy was established. It seems that in all these European countries the question of the national flag, to the need of which they had become alive was carefully studied and discussed, and that in each case an ordinance was promulgated in writing and a solemn ceremony was held to celebrate the adoption of the flag. Such being the case, it is a great pity that our country is sadly destitute of a similar history of her flag. As has been said already, our empire was long in a state of seclusion, no encouragement of foreign trade being ever given to the people. Little wonder, therefore, that the need of the flag remained unfelt, till towards the end of the Tokugawa Shogunate when our country was opened to foreign commerce. As soon as the national flag was deemed necessary a model of the flag was promptly made. In the meanwhile the Restoration of 1868 brought about a complete change of our national policy. The whole nation was now instinct with the spirit of progress. Hence the use of the national ensign.

After the lapse of some twenty-six years after the Restoration, there broke out the Sino-Japanese War, unprecedented in our history, as a result of which our national prestige was enhanced and lustre was

added to the flag. Then came the Boxer trouble, on which occasion our flag shone as gloriously as those of the European powers with which our country made common cause.

## 2 National Flags of Four Nations

Before we go into the details of the origin, the nature and the meaning of our national flag, we may do well to examine the histories of the flags of a few other great nations.

The Union Flag which is commonly called Union Jack consists of one red cross and two saltires, emblematic of the union of the three kingdoms. The red cross with the white fimbriation (which denotes the original white ground) represents the banner of St. George, the patron saint of England; the white saltire with the blue fimbriation that of St. Andrew, the patron saint of Scotland; and the red saltire with the white fimbriation that of St. Patrick, the patron saint of Ireland. It is a matter of historical fact that Scotland was once entirely independent of England. Prior to the reign of James I of England, who was James VI of Scotland, there was an almost incessant strife between the two kingdoms, each of which possessed its own King, legislature, national forces, etc. Ships of each kingdom sailed under the flag of its own, and disputes over fishery rights were not infrequent. Now the king, adopting a policy for the amalgamation of his two kingdoms, deemed it inadvisable for his subjects to have two separate flags,

and so he decided to enforce the use of the flag in which the two crosses were blended in union. On the twelfth of April, 1606, he issued a proclamation, which was worded as follows:

“Wherefore we will and command all our subjects to be conformable and obedient to this our order, and that from henceforth they do not use their flag in any other sort, so they will answer the contrary at their peril.

Given at our palace of Westminster, the 12th of April, in the 4th year of our reign of Great Britain, France, and Ireland.

This union of the flags, however, was not immediately followed by the amalgamation of the two kingdoms, which after the demise of James I, relapsed once more into a state of hostility against each other. It was in 1707 that the Act of Union was ultimately passed thanks to the pains taken by the zealous patriots bent upon the union of the kingdoms. And nearly a century after this amalgamation, Ireland entered into the union. Thus upon the establishment of the United Kingdom of Great Britain and Ireland, the union flag of 1606 became the present Union Flag which was first hoisted on the Tower of London on the first of January, 1801.

The history of the German Tricolour of black, white and red, is similar to that of the Union Flag. The German Empire was a confederacy made up of four kingdoms, eighteen principalities and duchies, and three free cities. Some of these confederates with their numerous ships came into prominence by virtue



of sea commerce, while others possessing no seaboard whatsoever had felt no necessity for maritime trade. And so the flag of each confederate had its own peculiar colour and design, and, what was more, different flags were used with different values. Some flags were far-famed because they were widely used for foreign trade, others had never been seen out of the borders of the states, of which they were symbolic. Therefore, we can imagine the almost insurmountable difficulty which was experienced in combining in union all these heterogeneous ensigns without hurting the feelings of the people of each confederate.

The flag of red and white, symbolic of the Hanse towns which had once taken the lead on the seas and which still retain traces of their quondam glory was as important as the golden standards eloquent of the highly distinguished military services of the Royal Families. Bavaria with its flag of blue and white desired blue to be the colour of the proposed national flag. Saxony preferred green to blue because her flag was of green and white. The Prussians proposed that their flag of black and white should be adopted as the national flag of Germany, whereas Wurtemberg advanced a claim to the adoption of scarlet. Such was, then, the difficulty found in Germany before the appearance of Article LV of the German Constitution which provides that the national flag of Germany shall be a tricolour of black, white and red. An examination of the materials for this particular provision of the German Constitution gave me a general

idea of the pains taken by the authorities concerned.

All people of Germany, however, did not immediately welcome the national tricolour thus brought into being with difficulty. There were people who accused the flag of being little better than the Prussian flag slightly modified. The central government touched up the song which the Prussians had composed in honour of their flag and adopted it as the song for the new national flag. But the people in the south refused to sing it. Furthermore, some of the confederates did not hoist the new flag on national holidays in honour of the German Emperor. Such being the case, we cannot feel inclined to envy Germany her national flag, notwithstanding the Emperor's boast that it carried everything before it.

After the World War, the Weimar Constitution of 1919 instituted the tricolour of black, red and gold anew; but this was abolished later, and Germany now possesses the Haken-Kreuz flag under the leadership of Adolf Hitler.

As for the French Tricolour, suffice it to say that although in the eyes of the French people it is symbolic of liberty, equality and fraternity, yet we cannot fail to recollect that its proud history was once stained with the blood of many innocent victims.

About the American flag let us say a few things which may be of some help to an understanding of America.

When the American colonies of the New World, labouring under the pressure brought to bear upon them by the government of the mother country, raised

the flag of independence, they were thirteen in number. In memory of these original thirteen colonies or states the people adopted a flag with thirteen horizontally disposed stripes, red and white, and it was determined that these thirteen stripes should never be altered. In addition to the stripes, were adopted the same number of white stars which have since then increased at every addition of a new state to the Union. At present these stars number 48. The law passed on the fourth of April, 1818, has the following provisions:—

Sect. 1. Be it enacted, etc., that from and after the fourth day of July next the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union have twenty stars, white on a blue field.

Sect. 2. And be it further enacted, that on the admission of every new State into the Union one star be added to the union of the flag, and that such addition shall take effect on the 4th of July next succeeding such admission.

Neither Washington, a champion of peace and self-preservation, nor Monroe, the author of the doctrine of non-intervention in America by European powers, was ambitious of aggression. But the trend of the world at the end of the nineteenth century did not allow America any longer to adhere to the policy she had been adopting ever since the establishment of the United States. Of late she has greatly augmented her national prestige, and quite naturally has done her best to induce other lands outside the union to realise the benefits of coming within the benevolent

influence of the "Stars and Stripes." The ever-increasing number of white stars on the American flag is in direct keeping with her present policy of expansion,—a fact which renders the flag excellent in comparison with those devices of the national flags of other nations which were fixed once for all. And the design and the colour of the stars and stripes are by no means objectionable.

Such is a brief account of the national flags of Great Britain, Germany, France and America. This leads to our next inquiry: Has our national flag a similar story to be told of it?

### 3 Characteristics of the Japanese Flag

History informs us that a flag marked with the sun (*hino-maru*) was first used on the first day of the first month of the first year of Taiho (A.D. 702). The "Wakan Sansai Dzuye" says: "The Emperor Mommu, on the first day of the first month of the first year of Taiho, held a court in the Taikyoku Hall, when at the front gate there was set up a banner with the figure of a crow; on the left, banners with images of the sun, of the azure dragon, and of the red bird; and on the right, banners with images of the moon, of the black turtle and of the white tiger." Also in proof of the early use of a flag marked with the sun, another old book says: "In ancient times, on the first day of the year and on the occasion of a coronation, there was set up, in front of the Hall, a flag with the image of a bird; on the left, flags with images

of the sun and of the red bird." In the "Taiheiki" we find a passage: "In the beginning of the Genko era (A.D. 1331-1332) the Emperor set up on Mt. Kasagi a brocaded flag with gold and silver images of the sun and the moon." Again it is said that the flag which one of the Emperors of the Southern Dynasty bestowed upon the family of Gojo of Chikugo was a kind of pennant (narrow and terminating in two long streamers), and that one of the streamers bore the device of a golden crow, symbolic of the sun, and the other that of a hare, symbolic of the moon. Whether the foregoing accounts of flags marked with the sun are true or not, I cannot say for certain. But I believe that it is near the truth to assert that a flag marked with the sun was first used in the Taiho era and then was widely used in the period of the Northern and Southern Dynasties, i.e. in the fourteenth century.

However, the use of most of these flags was limited to government circles; they were displayed sometimes before the Imperial Palace on State occasions, sometimes by the Imperial troops despatched for the purpose of subjugating rebels. These flags were not hoisted by the people at large, who regarded the state as the government, and the government as the court, confused sovereign with government, believed, unaware of their being part and parcel of a national organism, that they only lived in order to be governed, and considered that they would be overstepping the bounds of propriety by hoisting flags which they

thought belonged by right to the court or the government. Moreover, as a consequence of the protracted national seclusion, the government lacked a positive foreign policy, while the people scarcely thought of foreign powers. Thus for a long time our nation had no opportunity to display their national qualities to foreign powers, much to the detriment of the growth of ideas of a national flag.

In ancient times we had no national flag in the legal and formal sense of the word. Accordingly it is natural that we should be unable to give a historical account of our flag. Nor do I attempt to give one in perfect accord with the facts. All I propose to do is to advance a new interpretation of our flag with a view to inculcating upon our nation a sense of respect for the flag. I mean an interpretation which will lend itself to the tendency of the times,—an interpretation founded upon the basic principle of our national constitution, in accordance with justice and reason, and appropriate to the general sentiment of the people. Needless to say, however, matters relating to the national flag must not be lightly treated. A mistaken elucidation will have no small injurious effect upon public morals. Therefore I, who am the reverse of erudite, do not venture to attempt a dogmatic and definitive interpretation of our national flag. I only hope that my tentative view will stimulate men of light and leading to make a further study of the subject, and that persons interested will unite their efforts with mine in order to make a serious inquiry

into this question. Moreover, I maintain that interpretations of our national flag must needs be standardized, upon investigation by a committee selected from our Educational Department, Naval Department, War Office, Foreign Office and Department of Commerce and Industry, all of which have a close concern with the question of the national flag, and led by the first-named department, whose main business it is to secure the sanity of public morals.

Viewed in its four different aspects, our flag may be interpreted thus:

1. From the standpoint of ancestor-worship.

The device of the sun in our national flag is supposed to represent our venerable Imperial ancestress. Although I am not conversant with antiquities and no one should argue about the deity worshipped at the Great Shrine, yet personally I imagine that the Shrine is dedicated to the Imperial ancestress, Ama-terasu-o-mikami, Heaven-illuminating-great-deity, the Sun-Goddess. The sun is the image of the Sun-Goddess; hence her name, Ama-terasu, Heaven-illuminating. For this reason the sun was adopted as the device for our national flag, an object of reverence and worship. Learned people may perchance censure me for elucidating human affairs by dilating on a religious cult. Yet withal, a relationship between divine service and the heraldic charge of a flag appears to have existed in all countries and in all ages. Apart from the standards of the Crusades, the crosses of St. George, St. Andrew and St. Patrick all sprang from the idea

of divine service. The Tricolour of France had originally something to do with a lofty precept that all mankind should love one another. The iron cross of the German flag had its origin in ancestor-worship and reverence for the divine Being. Religious conduct gave sanctity to the devices of the Russian saltire, of the Turkish and Egyptian crescent moon and of the Chinese dragon on a yellow ground. We read in our history that the flags of Hachiman, the God of War, of Bosatsu (Bodhisattva), of Myoho, a sect of Buddhism, etc., were used in pitched battles and were highly capable of invigorating soldiers. Zeal begets energy. Faith produces zeal. In the light of these facts, if our national ensign may be associated with the image of our Imperial ancestress, for whom we show the highest adoration, then it is to be desired that the emblem of the sun should be respected by the people as highly and as ardently as the Imperial House.

2. From the standpoint of physical phenomena.

Physical phenomena include such entities as the heavenly bodies and the earth. And the sun is the central body of the solar system. Therefore, the device of a red ball which our flag bears may be easily and inseparably associated with the actual sun. The man-of-war's ensign of ours, a rising sun, is symbolic of the dawning sky; the device of the sunburst on a white ground represents in the four seas the majestic spectacle of the sun shining in all its dazzling radiance.

Let us now look at the geographical situation of



Japan. She lies in the far east of the world, and in consequence is a country which welcomes daily sunlight before other countries,—a country upon which Nature bestowed the emblem of the sun. Verily, foreigners call our country the land of the Rising Sun. Moreover, when we take into consideration the present position of our country in the world movement, the Japanese empire is not only the land of the Rising Sun but also a rising country in the Orient. Viewed from this angle, we may safely assume that our country was preordained to adopt the sun as the device of the national flag.

3. From the standpoint of the constitution of the nation.

The device of the sun is emblematic of harmony, of a round gem perfect and sacred. That our empire is harmonized and consolidated to the full is without a parallel,—a fact of which I became cognizant after a comparative study, from books, of the institutions in Europe and America, and which I ascertained during my tour abroad. Deeply moved by the glory of our polity, I upon returning from abroad, wrote an article entitled "The Perfect Unification of Japan," which appeared in the "Tokyo Nichinichi" ( a great daily paper) for January 1, 1901, and which I hope the reader will refer to.

If we may take for granted that the consolidation of our empire is unique, then nothing could be a more fitting emblem of such unity than our national flag. The disk of the sun which is the device of our flag

shows by reason of its endlessness that the Imperial House is coeval with heaven and earth, so much so that we cannot help being filled with adoration for our national flag.

4. From a pigmental point of view.

I believe that the meaning of our national flag can be fully understood from the foregoing three points of view, but in order to be thorough I shall now look at our flag from the standpoint of colour. By colours we understand the spectral colours of red, orange, yellow, green, blue, indigo and violet, and others produced by mixture of them. Viewed in the abstract, colour is meaningless. Blue is blue, and red is red. Be that as it may, psychologically speaking, colour is pregnant with many meanings. If we once give play to our emotion, and consider the different colours whether pleasurable or displeasurable, and go into the why and wherefore, there will grow up the science of colours. Since blue excites a feeling of ghastliness or dismalness it is used, by extension, as a sign of stillness or calmness; black is considered of bad omen, because it signifies a dark future; green is supposed to signify vigour and progressiveness, whereas yellow is taken to indicate malady and misfortune. Thus every colour possesses a property of its own. As different men have different minds, so different people advance different theories equally convincing. No wonder, then, that colour, when considered as indicating a kind of feeling, permits different interpretations. A colour which excites a feeling of ghastliness

with one person may excite that of pleasure with another. Some think of black and death at the same time, while others say that white suggests the idea of Nirvana. One man's blue may be perchance another man's brown. Furthermore, colour is looked upon sometimes as the foundation of loveliness, sometimes as the height of ugliness. Various as are the ways in which colour is interpreted, not infrequently the conception of colour as nothing but a phenomenon which nature presents is reverted to, and colour becomes interpreted as emptiness, unreality, non-existence.

It is thus extremely difficult to arrive at a satisfactory connotation of colour. There is nothing for it but to call upon philosophers to evolve profound theories of colour. Nevertheless some popular notions and interpretations of colour are so inviting that we may avail ourselves of them. The word *tanshin* (lit. red heart) so often used by those versed in Chinese literature is an equivalent of what we call in popular parlance *akaki kokoro*, and means sincerity and goodness. On the other hand, we speak of *hara kuro* (lit. abdomen black), said of evil-heartedness; for black implies murkiness and baseness. White implies, however, purity, cleanliness and spotless integrity as well as colourlessness and tastelessness. Nearly all the Japanese and Chinese admit this interpretation of three colours, red, black and white.

As regards the people of the Occident, it is probable that they have a different taste for colour, because

their customs differ from those of the Orient. What we like may not appeal to them. What is ugly with us may be beautiful with them. Now then, in explaining the meaning of our national flag how should we adjust the probable discrepancy between the Occidental and Oriental conceptions of colour? We should attempt harmonization, if it is possible; but if the difference is not harmonizable we should assimilate Western sentiments and thoughts. This, I think, will be advantageous to our country, if its present position in the world is taken into account. Let us now compare the ways in which two common colours, red and white, are used in various countries.

Our army, when bombarding the fort of Mu-tan (Peony-Point) in the Sino-Japanese War, stopped firing at the sight of a white flag on the fort. When fire was vigorously exchanged between the German and French armies in the War of 1870-1871, the Germans received with courtesy the Frenchmen who approached them with a white flag. In ancient annals of our country we find mention of white flags hoisted in sign of surrender. The "Jingō Kōgō Ki" (The Chronicle of the Empress Jingo (201-269 A.D.) says: "The king of Silla hoisted a white flag of surrender." The "Kinmei Tennō Ki" (The Chronicle of the Emperor Kinmei) says: "The general of Silla set up a white flag." Chinese history makes frequent mention of a carriage of plain wood and a white horse, accompanied by a white flag, as the marks of a king's surrender. Thus we know that the use of a white flag

in sign of surrender is common to many countries and has been in evidence from time immemorial. The white flag is also commonly used as a sign of truce or peace. This is because white is simple in itself, perfectly free from turbidity, and therefore implies purity as well as integrity. The reason why we display white on inauspicious occasions is not that white is unlucky in itself, but that it serves to remove unluckiness. Besides purity and integrity, white implies coolness, prudence and simplicity.

Now the device of our national ensign is a red ball, indicative of a red glow of enthusiasm, on the white ground. What is this but a symbol of loyalty and patriotism?

With regard to red we have practically the same notion of it as other civilized peoples. In every country of the world red implies not only enthusiasm and sincerity but also vehemence, dash and danger; and so it is often used in sign of disasters such as collisions and explosions. But if we may admit that these implications sprang from the original meaning of red, that is zeal and sincerity, then there should be no objection to adopting red as one of the colours of a flag. If red is used for a danger-signal, our national flag is by no means a red flag: it bears only a red ball on the white ground, which means no danger whatsoever in time of peace, while in an emergency the flutter of it suggests a flourish of that sword with which a Buddhist deity is supposed to smite demons. Verily, our national flag is symbolic

of that mysterious demigod who, when in good humour, endears himself even to children and from whom, when in a rage, even a fierce tiger recoils; it is a gift of heaven which displays the glory of the present-day Japan within the four seas.

From the standpoints above mentioned, we may say with confidence that our flag is a fitting emblem of our empire, the like of which is hardly to be found. We are happy in the choice of our flag. Such is my view of our flag,—a view which I hope to disseminate widely for the purpose of stimulating patriotism on the part of those who are living within the empire as well as those who are leading a seafaring life on outward-bound vessels and those who are working in foreign countries.

I published the above essay in 1901 when I came home after completing my first tour through Europe and America. During the forty years that have elapsed since then quite a number of those who are of my mind have carefully studied the question of our national flag, and consequently the people at large have begun to pay attention to the flag. But we cannot say that the attitude of the whole nation towards the flag leaves nothing to be desired. Let us, therefore, exert ourselves to go more deeply into the matter, so that the right idea of our flag may be widely spread among our nation.

## SECTION II

### THE REAL NATURE OF JAPAN AND THE JAPANESE

Ever since the Sino-Japanese Incident arose (July, 1937) Japan's policy and activity have been the object

of scrutiny by foreign scholars, statesmen and diplomats. Unfortunately, however, there have persisted misunderstanding, suspicion, jealousy and misgivings on the part of the majority of these people, mainly due to their lack of information regarding the real nature of our Empire and the racial characteristics of our people.

We are, therefore, in duty bound to inform the peoples of other countries about these two vital points. It was because of this need that I have already written many pamphlets in English on the Japanese nation for the purpose of elucidating the nature of our Empire, and presented the copies to the universities of other nations as well as to foreign scholars, statesmen and diplomats. I have also made a lecturing tour in Europe and America for the same purpose.

In my lectures before foreign audiences I left out the racial traits of our Japanese nation, and so I will now undertake to touch upon this latter subject. I wish to enlighten the people of the western countries as to our racial traits, and this will have beneficial effects on all concerned. I am convinced that my account of our own nation will enable the statesmen and others of foreign countries interested in Far Eastern affairs to perceive that the notions they have hitherto entertained about the Japanese and their racial traits are not always correct. Whether or not they agree with the conclusions of the author, it is a foregone conclusion that they will profit by reading my present story. They will be assisted to decide

their future attitude towards this country.

As everyone is well aware, only about 80 years have passed since we opened our doors to the outside world, and scholars of foreign countries have paid keen attention to our national traits, and some of them have devoted much time to the study of our spiritual culture. Our wars with China and Russia and our participation in the Great War had the effect of stimulating the interest of foreign scholars in things Japanese. But the recent conflict between China and this country has occasioned the manifestation of erroneous views regarding the spirit of our nation, especially after China made appeals to Great Britain and the United States regarding that conflict. Such mistaken views of our national spirit are regrettable not only for the peace of the world but also for the ideal of racial harmony among nations.

One may say that the prevalence of such erroneous conceptions of our national traits and culture on the part of foreign peoples is only too natural in view of the fact that only recently we began to associate with other nations. It behoves us to do our utmost in order to assist foreign scholars to acquire a true knowledge of our nation. We must also let our people know of the true spirit of other peoples, in order that the peace of the world may be preserved. These are the aims of my writing upon this topic.

Japan and the Japanese, as they really were and are, can be only explained by us Japanese. Nothing but such an explanation can indicate to the world



the actual problems we are now confronted with and those which we may face in future. Generally speaking, foreign interest in Japan and things Japanese has been chiefly aroused through her wars with Continental Powers in modern times. It is to be highly desired that the observation of our country by foreign people should be done more deeply than has hitherto been done. One should not be content with a superficial observation of social phenomena: one should do one's utmost to penetrate into the inner life and ideals of the races that are to be studied.

I shall here divide the topic into three heads.

### 1 Japan as viewed in a Spiritual Light

It goes without saying that those wishing to understand other nations as they actually are must guard against views arising from their own preconceptions, and must observe their nature in its entirety on its spiritual as well as material side. It is neither simple nor easy to consider a civilisation even in its material aspects, in reference to such factors as its special natural environment, the temperament of the people, their social conditions and systems etc.; but as material factors are more easily discernible, foreign observers of our civilisation have concentrated their attention upon such factors to the utter neglect of the latent and spiritual.

In considering the real nature of Japanese civilisation, it will be seen that its material factors have largely come from foreign countries, while its spiritual

and mental factors have been derived chiefly from purely native sources. A deeper analysis of the spiritual and mental factors of our civilisation indicates that while the intellectual life of the race has been greatly affected by foreign influences, its spiritual factors—religion and morality—have largely developed along the lines of the native spirit. Though Japanese mental civilisation is made up of these two factors, spiritual and intellectual, what may be termed its special character has been spiritual rather than intellectual. This point has been unfortunately ignored by foreign critics. It is desirable that those wishing to observe modern Japan should re-examine the real nature of the national spirit of Japan. Any one trying to trace modern Japan to its original sources will find that history in Japan has been at work from time immemorial to develop the spiritual unity of the race, overcoming the difficulties that often presented themselves in the way of the national development.

It is necessary for foreign critics to remember that what is paramount about the history of the spiritual life of the Japanese is what lies hidden in its depth, and is not the surface indications that appear at national crises or difficulties. Just as a river flowing continuously throws up bubbles from its bed to the surface, while its real self is hidden beneath, so the spirit of Japan has its latent reality beneath its historical bubbles. This very spirit is the source from which Japanese history has developed. One may

truly say that Japan's recent activities in China represent the awakening of this slumbering energy; they are nothing but a manifestation of this racial spirit. It is clear that if one wishes to understand the national life and endeavours of the Japanese, one must consider in detail their latent spirit as well as its manifested energy, because the former is the source of the living moral and religious power of the people. It will continue to be so in the future as it was in the past and is at present.

Hitherto, foreign critics have tried to explain the national greatness of Japan in the light of the Western learning and institutions which she has adopted; they have also expressed the view that Japan's enviable position in the world was due mainly to her military prowess. But the real cause of her national greatness and consequent international importance really lies in the moral and religious training by which she has continuously evolved her racial ideals from the very outset. Her material civilisation is not the real source of Japan's greatness; nor is her fighting power a sufficient ground for her national confidence. What she really depends upon and of which she may justly be proud is indeed the ceaseless endeavours and activities with which her people have evolved their fortunes along moral and spiritual lines towards their nobler ideals.

When, at the close of her feudal period, Japan opened her portals to the outside world, she was ready to absorb things Western; she was feeling refreshed

from a long slumber and rest during the period of her national seclusion. She eagerly adopted the Western systems of politics, economic and military organisation, science, etc., and at the same time, she was careful to preserve the native spirit of self-sacrifice handed down from ancient times.

Nations, let us remember, are not great merely because of their material or military power; what is indispensable for their true greatness and glory is moral virtue. Now, can they attain such a state of moral perfection by keeping themselves aloof from others and by refusing to maintain friendly relations with them? Decidedly not. Nations can make progress in spiritual and material ideals by enhancing their welfare, on one hand, and by endeavouring to assist others as far as possible, on the other. The ideals of a sound civilisation demand that nations should stand in more and more intimate relations with one another. Now, the spirit of self-sacrifice which enables all nations to progress intellectually and ethically and at the same time unites them morally for mutual help, has been historically developed in Japan; and in spite of her almost furious modernisation, that old spirit has remained unchanged, and there is a good reason to believe that it will distinguish her in the future as it did in the past.

This is a point which no one who wishes to know Japan intimately should fail to notice. To consider her a ferocious and crafty nation is a misreading of her true character, and is based on shallow and one-

sided observation and a misrepresentation of the significance of Japan's fighting power and the rapid modern changes that have occurred there. The proper way to understand the Japanese people as they really are is to make clear the special character of the spirit of Japan, which survives beyond the changes of the times, and also to learn the true Japanese estimation of this spirit.

## 2 The Psychology of the Japanese Race

If nations wish to have friendly intercourse with one another, and to rise above the state of antipathy as natural enemies, it is hardly necessary to say that they ought rightly to understand one another's psychology through study of their natural environment, history, social and other special conditions. In considering the racial characteristics of the Japanese faithfully reflected in their manners, customs, traditions, and mythology, we shall discover two great characteristics of the racial spirit. The mythology of Japan is artistically enriched by the dualistically constructive thought embodying the ideas of light and darkness, of good and evil, of violence and gentleness. This dualistic attitude is so deeply rooted in the racial thought that it naturally appears in the life and history of the Japanese as a striking love of paradox. To mention the most conspicuous features in their mentality :

First, there is their tolerant generosity. This is revealed in their mental search for variety, in their

endeavour to take in different elements; and this historical fact is too obvious to need further elucidation. What is too often lost sight of is the psychological faculty revealed by the free and bold indulgence of their many-sided spiritual appetite. And their vigorous, active, springing, vivid life is probably the result not only of their custom of loving Nature, but really of the creative impulse fostered by contact with many different factors and by taking in various elements—that is, by applying successfully the method of refreshing life by touching life at as many different points as possible.

Secondly, there is their assimilative nature (*dōkwa-sei*) acting powerfully and constantly. They do not take in foreign elements indiscriminately, but select and digest them till they become part of their own nature. This assimilative power is strikingly illustrated in their historical development, marked by an unbroken sequence of progress and enlightenment, and assisted by Chinese, Indian and Western civilisations, each of which has offered its own special material which has since been Japanised.

These two mental characteristics (the tolerant and the assimilative spirits), being originally different from each other—the former producing the complex, the latter the simple, the former expanding, the latter concentrating—tended to create a curious dualistic faculty in the mind of the Japanese people. Their love of paradox, as represented by inclusion and assimilation, possesses the power of self-preservation,

on the one hand, and, on the other, of making easy reconciliation and union with other peoples. The fact that both the centrifugal and centripetal activities are found in the mind of the Japanese people is responsible for the unquenchable, progressive spirit with which they unswervingly and vigilantly pursue their ideal.

One of the most striking phases of the racial character which may throw light on this consideration is what may be called the positive heliotropism of the Japanese race. It is most obvious, on putting the character of the Japanese people to the test, that they have a racial heliotropism, a constant tendency towards the sun. It is not without significance that, among other natural phenomena, the sun has been a prominent object of worship among the Japanese since the so-called divine age, and this worship early gave birth to a magnificent mythology in which the sun was regarded not only as the power that gave life to everything, but also as the source of light and heat, and as the symbol of truth, goodness, and beauty, in so far as those qualities could be manifested by means of it. The worship of the sun aided the development of their ideas of truth, goodness, and beauty; and also symbolised in an increasing degree the evolution of the original racial tendency towards the sunshine—a convinced optimism—a constant habit of looking on the bright side of things.

Again, in spite of their appreciation of a calculating and alert disposition; called out by their frequent association with volcanoes and earthquakes, yet their

predominant characteristic is their love of frank truthfulness and what is simple, innocent, straightforward, and unpretentious. Further, the ancestral love of purity is shown in the cleansing (often ceremonially) of pollution by natural elements, driving away impurities by wind, and by bathing in the sea-tide or flowing river; these practices indicate that the Japanese appreciate cleanness and singleness of heart, as opposed to impurity and corruption; they seek the purification not only of the body but also of the spirit, because they regard sin and pollution as one and the same thing.

Lastly, those who know well the beautiful poetic elements in the Japanese island-life, and the part they have played in Japanese history, will be fully aware how impossible it is that they should fall into a sheer realism which is opposed to the aesthetic ideals so strongly expressed by the national flag—the symbol of the Sun (cf. Chapter XI, sec. 1 “The National Flag of Japan”).

We know how the Japanese people's inclination to turn towards the sunshine is generally reflected in Japanese manners and customs, temperament and taste, etc. Above all, their love of cherry-blossoms, of which most foreigners apparently fail to understand the true reason, is really because these blossoms, so refreshing and so emblematic of purity, are naturally akin to the taste and character of the Japanese people, and thus readily satisfy their aesthetic emotions.



The Japanese people love such an innocent and refreshing spontaneity of beauty. It indicates simply and plainly the character of the people who are fond of such advices as "Be cheerful," "Be sunny in disposition," "Make the best of your life," etc. Their ideal, developed from the ancient devout worship of the Sun, finally comes into line with the inner feeling which makes conscience the sun of the heart, and which seeks the sun within the "heavenly garden of the heart," as Shinto scholars expressed it.

If, then, this natural inclination towards the sunshine is one of the most conspicuous traits of the Japanese people, to consider the character of the Japanese as generally cunning or crafty would be but a dogmatism based on biased views or a deliberate unwillingness to understand the position of others.

It follows that anyone who really wishes to understand the rather daring activities of the Japanese, their cult of honour and intrepidity, however subtle their motives may seem, should never be discouraged from making inquiry into the other side of their character, namely their equally ardent love of honesty and impartiality.

### 3 The Morality and Religion of the Japanese Nation

How could the Japanese nation take in foreign elements and differentiate them, without being perplexed by them? Again, how could they assimilate those elements with their own qualities and turn them

into a practical power, and thus develop their organically united national spirit? Anyone who desires to answer these questions should, first of all, pay keen attention to the inner life of the Japanese, and understand that their national morality and religion are the manifestations of their original spirit.

Seiji Hishida says in his "Japan among the Great Powers" (1940, p. 5): "The Japanese freely welcomed and assimilated the Chinese, Hindu, and Western civilizations, and remodeled them in accordance with their own, but never enslaved themselves to alien teachings."

Japan is often called "the unpretentious country." In our country, practice was considered from the first as more important than theory, and there is evidence to show that the people went almost to extremes in this respect, when as a nation they were forming their traditional motto concerning this principle. Because they are not pretentious, it is difficult for foreigners to know the truth about spiritual Japan; and what has been very often totally neglected by foreigners has been just the very essence of the inner life of the nation.

We should, then, try to understand the strength as well as the weakness of the spiritual depth of their nature; and this we can do by examining the ideals our people entertained but never displayed, in their reverence for deeds rather than for words and by trying to discover the hidden meanings of achievements and facts rather than of abstract theories.

Various forms and systems of training of the

Oriental spiritual culture are followed in Shinto, Bushido, and other cults as means of cultivating practical ability. Such cults insist on a thorough drilling of the body, on securing the unity of mind and body, on the educational training of the spirit, etc. The practical value of thus cultivating various forms of practical ability has proved stupendous, though foreigners usually fail to perceive it. What they fail to recognize is that this practical attempt is not a mere conventionalism, but is the expression of the ardent, positive principle of desiring to prove absolutely, by deed, the truth of what the Japanese believe to be right or good.

In considering the guiding principle of the Japanese nation, what challenges our greatest attention is the fact that the lives of the people as individuals and as a nation are so closely bound up and fused together that the whole nation in its complete spiritual agreement has greatly developed the virtue of cooperation in its corporate life. So we can see a two-fold combination in their spiritual life of the social and the genealogical factors; each individual not merely uniting with others socially to make up a nation, but also united with his or her ancestors by ancestor-worship, thus being linked by a long line of hereditary descent. This is the reason why they are relatively more valorous when they are united, in spite of their peaceableness as individuals, a fact admitted even by foreigners; and here we have the real psychological foundation of the solidarity of Japan.

What is especially worthy of attention is the fact that, on the one hand, in spite of ideas of rights and liberty, and of the dignity and value of the individual recently coming into their own in Japan under the influence of European thought, still, on the other hand, the original principle of pure self-sacrifice is retained no less now than formerly as an essential element of the Japanese spirit. This principle of self-sacrifice or unselfishness, which is the root of the sincere loyalty and voluntary obedience of the Japanese, is the true power which inspires them. Therefore, though to-day they are looked at with suspicion, and are considered by foreign observers as subtle and crafty, yet anyone who impartially investigates the foundation of their morality and belief will not find it difficult to perceive that the common basis of their morality and belief is essentially the same as his own, and will indeed recognize the truth of the saying: "Light is good in whatever lamp it is burning. A rose is beautiful in whatever garden it may bloom. A star has the same radiance if it shines in the East or in the West."

Thus, then, though the morality and religion of the Japanese have elements peculiar to themselves, they do not necessarily contradict universal moral and religious principles. It is obvious that nations as well as individuals, while agreeing with one another in their essential nature, may yet develop national as well as individual qualities peculiar to themselves and relieve the world from monotony by playing a

distinctive part in the concord of humanity. Acting in concert with one another does not imply an agreement which destroys the special nature and character of each nation, but should be the effect of a successful evolution of the special nature and character of each nation. Every country evolving its individual values as a nation should contribute to the happiness of other friendly nations, as red and blue, for example, contribute their peculiar qualities of colour to the beauty of nature. So this ideal is not anti-national after all; it is international.

But there is one thing of which every people should be careful; while it is right that every country should appreciate its own nationality at its full value, there is a great danger here in overvaluing the merits of its own nationality to the neglect of the merits of other peoples' nationality. For this would prevent paying due heed to others, and while naturally leading to ignorance of other countries, would at the same time forbid a true understanding between nations. The great necessity is to view correctly one's own country from a world-wide standpoint in its relation to others; and every country should consider its political ideals and national principles in this light, seeking wider and firmer spiritual foundations which will assuredly breed a new patriotism based on a full recognition both of national and international claims. There is on the horizon of humanity no problem of graver importance than the relation between nationalism and internationalism, the only possible solution of which

is that every nation should form a new conception of its fellow nations; first of all, the nations should try to understand each other spiritually, and thus find a common bond which lies at the root of the ideals and beliefs of different peoples.

### SECTION III

#### THE RELATIONS BETWEEN JAPANESE NATIONAL TRAITS AND BUDDHISM

Here I propose to explain the deep influence which Buddhism has exercised on the Japanese national traits and to show the power of assimilation possessed by the Japanese people and their willingness to improve their own conditions by borrowing whatever good points are to be found in other countries' civilizations.

It is not true that Japan is characterized by a narrow nationalism or by a spirit of exclusiveness. This is shown by the fact that she has been very solicitous to absorb whatever excellent points are found in the ideas and systems of other countries and has been strictly adhering to the principle of "live and let live." This was true even in ancient times.

She learned from China and India; from the former she imported Confucianism, from the latter, Buddhism; she used both for increasing the happiness of her people. Realizing that these foreign ideas and teachings in their original forms were inadequate both in quantity and quality, our ancestors endeavoured to Japanize them in order to make them fit to

the domestic needs of the nation. Although both China and India, which were more advanced than our country, unfortunately failed to utilize Buddhism to their advantage, our nation has received innumerable blessings from it.

Japan is quite willing to learn what the advanced nations of the West can teach to her best advantage as well; she is eager to absorb and digest what the Western nations may give her; she is willing to respect them as her teachers and benefactors. It is our ardent wish that the true intentions of our country may be rightly understood by these nations and that they will not regard us as an exclusive, unsocial people. The internationalism of the Japanese national traits, we hope, will be appreciated by our readers.

### 1 Inherent Traits and Imported Culture

It is widely known that Japan's first Emperor Jimmu ascended the throne more than 2600 years ago and this was preceded by several thousand years of a prehistoric period, and thus, Japan boasts of a long history of unbroken national development. Other nations may indeed have their own histories, in some cases, as long as that of Japan; but our history is one of the same social life, recording the ceaseless social and political improvements demanded at each stage of our national existence. This historical process is peculiar to our nation, and constitutes the foundation of our racial characteristics.

Man is chiefly distinguished from the beast in that

he has established civilization in the course of his social development. However, different races have not been equally successful in their racial survival; some of them have been unable to overcome difficulties in their natural and social relations and have declined or have suffered a downfall or moral decadence. A nation which has succeeded in building up a culture of its own despite its natural and social difficulties may be said to be a superior nation and its culture may be said to have merits of its own.

Much discussion has been held regarding the racial characteristics of the Japanese who have thus succeeded in building up a culture of their own. Their traits are embodied in their State life and underlie the "glory of the fundamental character of our Empire." This glory is the result of our success in overcoming the various difficulties which have stood in the way of our national development. We have maintained our national life despite our over-population; we have shown a spirit of unity and cooperation; and each of the Japanese subjects is ready to sacrifice his small self in the interest of his larger self, the great life of society, for which he would give up even his life, should necessity demand such a sacrifice. The Japanese are ready to live a life of self-sacrifice, because they are appreciative of the fact that their existence has been possible because of the favours they have received from nature, ancestors, society and the state. Japan's national expansion has been the result of the daily endeavours of her people in their respec-



tive walks of life.

The spirit of social service has also developed in the Japanese the qualities of magnanimity and of flexibility in social relations, and these have helped the people to assimilate the cultures and institutions imported from the more advanced neighbours. Moreover, these same cultures and institutions, in turn, had the effect of nourishing the qualities of magnanimity and flexibility. It was these mental qualities that have brought about the assimilation of cultures imported from foreign countries such as Korea, China, India and Persia in ancient times and from Western nations in modern times.

Of the various foreign cultures and institutions imported into Japan, those from China and India have exercised the greatest influence on the development of Japanese national characteristics. From China were imported the ideas and doctrines expounded by many thinkers in ancient China, especially during the Chou dynasty, and Chinese institutions based upon those ideas and doctrines were developed during later periods, the Sui and Tang dynasties, in particular. These basic Chinese ideas and doctrines embody the so-called "Three Teachings," namely, Confucianism, Taoism and Buddhism. Confucianism was based on the teachings of Confucius and Mencius, developed through the pre-Han period and the following six dynasties, and underlay the systems, learning and social life of the Tang dynasty.

When imported into Japan Confucianism at first

represented an art of writing. Later, it became a source of systems and ceremonies; and after being affected by the new learning of the Sung and Ming dynasties, it furnished a modern system of learning, and was the controlling principle of Japanese learning, morality and the life of the middle classes of Japan. Taoism is based on the teachings of Laotze and Chuangtze and prevailed chiefly in South China. It was developed during the Han and Tang dynasties before making its way into Japan. It made a great contribution to the religious life of the middle classes in Japan, to whom it appealed, because of its emphasis on spiritual peace, patience, nurture, and willingness to abide by fate.

It should be noted that it was Buddhism rather than either Confucianism or Taoism that has affected the thought of the Japanese race on the whole.

## 2 The Importation of Buddhism into Japan

Buddhism originated in India about 2500 years ago, and after it underwent a remarkable development and proved a potent source of culture and institutions, it found its way into the China of the post-Han period extending for 700 years. It was then remodelled to suit the Chinese traditions, and became the basis of Chinese doctrines, arts and social life. It made its way into Japan during the Sui dynasty. Such different Buddhist sects as Sanron, Hossō, Ritsu, Kegon, Tendai and Mikkyō were imported into Japan one after another. Each of these has its own characteris-

tics and is different from the rest, but they all had their share in moulding the national ideas of the Japanese people.

Of these different sects, Sanron, Hosso, Ritsu and Kegon represent the Buddhism of the Nara period, and it is because of their being basic Buddhism that they influenced the latter-day Buddhism and the people. The rise of the Tendai and Shingon sects was due to the importation of the Chinese culture and institutions in the middle of the Tang dynasty, and these form the foundation of the Heian culture, and paved the way for the development of new Buddhist sects during the Kamakura period. Kamakura Buddhism may be traced to Indian and Chinese sects, but it is highly Japanese in character. Some sects of the Kamakura period, namely, Jōdo-nembutsu, Zen and Nichiren were especially Japanese in character and they greatly influenced the life and ideas of the Japanese people throughout the old periods down to modern times. It is because of this historic influence on the people of Japan that it still persists as the basis of Japanese thought even today, despite the religious toleration which has been practised, the decadence of the old Buddhist sects, the effects of imported Western ideas and systems and various modern social transformations.

We may say, in a nutshell, that it was Buddhism that saved Japan in the past and it was Japan that purified Buddhism.

The Buddhist sutras were first presented to the

Japanese Imperial Court by the King of Kudara in the Korean Peninsula 1,381 years ago. Shortly after this, Japan fell into a miserable condition. The resources of the land were utterly exhausted; frequent famine and pestilences befell the people; and because of this economic hardship, internal quarrels developed among the people. Sons opposed their parents, and servants fought against their masters, villages met in battle and provinces were engaged in bloodshed, until the Imperial Court was troubled. Although the Imperial Court was entitled to every respect because of its virtuous existence, it was dragged into the internal disturbance that prevailed throughout the whole land, because of the confusion in the people's thought and economic difficulties of the time.

Then, there appeared the Saviour, in the person of the Crown Prince Shotoku-taishi, who acted as Regent for the Empress Suiko and who thought that Buddhism alone could save the country from these internal disturbances. In order to bring about internal harmony and unity of purpose among the people, he thought that national reverence for the Sambo or "Three Treasures" was necessary. The "Three Treasures" in Buddhism consisted of Buddha, Buddha's Teaching and the Clergy. By Buddhism alone every person, however sinful, can be saved, and wrongs, however pernicious, can be rectified. Reverence for the Three Treasures at times actually meant reverence for the statues of Buddha, Buddhist sutras and Buddhist priests. However, the real meaning of

the Three Treasures is something radically different. Its central idea is a wide-awake social life in which every member is keenly conscious of the part he has to play in the life of the community.

To attain such a state, fairness, openness, and harmony among the members of society must be maintained on the one hand; and secrets, intrigues, darkness, unlawfulness, injustice, and the spirit of hate and destruction must be outlawed, on the other. But, in order to ensure fairness and openness among the members of society, a right education is necessary. In order to bring up people in the right direction, reverence for the Supernatural must be taught to the infants of 4 or 5 years old. When their ages are between 7 and 15, physical and mental education should be given them. Those above the age of 15 must be taught the right philosophy of life. In the first place, they should be instructed that they should engage in the agricultural pursuit as the central vocation in the whole world. Men should rejoice in working on the fields and paddies. To live in the spiritual rejoicing of Buddhism would ultimately result in the establishment of social harmony and in the advent of social progress in the life of the State.

Prince Shotoku worked in this conviction and his efforts were successful. Those who were poor until yesterday became wealthy today, the population of the land increased and there was heard a general chorus of rejoicing. When Shotoku died some 20 years later, the whole nation lamented. History

records that, "as soon as the news of the demise of this great Imperial leader was flashed and spread like wild fire, all pedestrians halted; those who were weaving threw away their reeds and people were silent like the grave, refusing to eat, as if they had lost their own parents."

During one hundred years that followed, the splendid arts and morality of the two eras of Nara and Heian developed. Although manifold changes took place in the life of the nation during the following eleven centuries, it is undeniable that it was Buddhism that controlled and developed Japan's culture and institutions. Thus, it is clear that Buddhism succeeded in saving Japan which was on the verge of collapse.

### 3 Japanized Buddhism

At the same time, it should be noted that Japan imparted a fuller life to Buddhism. Although that particular branch of Buddhism which found its way into Japan was a tributary, so to speak, of the main stream of Buddhism, it has since broadened into a vast expanse not to be seen even in India and China. The main characteristics of Japanese Buddhism are to be found in its stress on the realism of Buddha and the practicality of the creeds and in its attempt to apply them to the life of individuals and the State. While India thinks Buddha to have entered Nirvana and China believes Buddha is ever extant, Japan lays stress on the practical phase of Buddhism, and at-

taches importance to the actual life of faith. Buddha's teaching is regarded in terms of human life and is not identified with either the doctrines expounded by Gautama or their meanings. In fact, Buddhism in Japan has been by far the most effective means of relieving people from their sufferings, crimes and privations.

Japanese Buddhism is different from that of China and India in that we try to observe the teachings of Buddha through practices such as meditation and prayers. The Buddhist priesthood which embodies the teachings of Buddhism has been fully alive to the importance of human society, ever intent to serve the community and aiming to maintain harmony in our State life. Thus, Buddhism in Japan has become a practical religion capable of meeting the real needs of all social classes, instead of being a perquisite of the nobility or upper classes. This is seen in the different attitudes of the Japanese and Chinese towards the Buddhist sutras and temples, though the two peoples agree in their reverence for them. By their critical attitude and process of elimination, the Japanese developed the good points of Buddhism.

This attitude on the part of the Japanese has been also shown in the case of other foreign cultures and learnings imported into their land. Our ancestors imported Korean culture and then raised it to a high pitch of perfection; and it has come to be an important factor of Japanese civilization, although in Korea it had long ago lost its hold on the people.

The same may be said of Confucianism and Taoism, both of which have become living moral forces in Japan, although they have ceased to exercise any strong influence upon the Chinese. We have succeeded in enabling the living elements in Chinese culture and learning to develop and enrich our own culture and institutions. Herein are seen our national traits in their most complete form. We are ready to absorb whatever cultures other nations may give us and to develop them to their natural perfection.

One may point to the apparent confusion which has been created in our people's thought as the result of the importation of Western culture in modern times, for we seem to absorb Western ideas and institutions without discrimination. However, such a view is highly superficial. The paramount national trait we have observed is bound to operate in our digesting of Western culture. We are certain to develop what is real, true and lasting in Western culture and so use them in making our life fuller and more wholesome. For this reason, those who consider us as mere imitators of Western nations observe our national life on the surface and fail to consider the great undercurrent of our national life.

#### 4 The Influence of Buddhism

Buddhism has made the original Japanese culture a religious and international force, by deepening and expanding it. Although we admit that the ancient Japanese national idea was based on a deep religious



conviction, that conviction was not consciously expressed. And it was Buddhism that imparted a real spiritual force to Japanese culture, by insisting that all social achievements are the result of causal relations and human harmony, and by holding that nothing standing alone is permanent or real, and that value is created through perfection and the combination of parts into a complete whole. This characteristic idea of Buddhism in Japan is seen in the close and inseparable relations between the Emperor and the people, every one of whom is regarded as a child of the Ruler, and whose combined endeavours and harmony with one another are the basis of our national power. Every Japanese is conscious of his being a subject of the Emperor and is convinced that every act of his, however humble, will affect the general march of the State. He also feels that he has to fulfil his duties to society and to the state by way of showing his gratitude for the great favours he has received from his ancestors, the state and nature.

Buddhism has formed the theoretical basis of Japan's national ideas, social order and development, and it has been translated into her learning, morality, art and ceremonies. Although its influence on society has been different at different periods, there is no doubt that it has always formed the basis of Japanese thought throughout the history of the race.

Moreover, Buddhism widened the people's outlook upon life. Before the importation of Buddhism, the national traits of the Japanese had been inevitably

marked by an insularism. When this religion was introduced, that narrow sentiment was manifested in opposition against it by the leaders of the native religion. Thus, the spirit of national exclusiveness opposed the internationalism of Buddhism, which had spread in Western India, China, and Korea, and which was a true universal religion whose teaching was eternal and transcended the vicissitudes of the times; but those narrow Japanese ideas were made international in their nature through the influence of Buddhism. Bushido or the way of the samurai may have existed even before the importation of Buddhism, but there is no doubt that it was strengthened and nurtured by Buddhism. The Japanese may use force at times, but their object would be always to uphold justice and never to carry out any selfish design. They have formed the habit of adhering to justice even at material cost. The virtue of patriotic harmony among our people also has been intensified by the teachings of Buddha. The spirit of self-sacrifice and of great mercy so characteristic of Buddhism has inevitably created among the Japanese people a love of peace.

Buddhism also gave a strong impetus to the growth of learning and art among our ancestors. To copy the sutras was thought the most effective method of attaining perfection in learning, while the making or painting the images of Buddhist deities exercised a powerful influence on the growth of our sculpture and painting. Our ancestors built up their character

by earning bread by the sweat of their brows and at the same time by leading a devout religious life. Their national characteristics, born in their fair land of lofty mountains and enchanting rivers, were further ennobled by this great universal teaching.

Thus, it is clear that Buddhism has had the effect of deepening and widening whatever good qualities possessed by the Japanese. At the same time, it reformed the inherent bad qualities of the Japanese national character by means of its international and critical standard. Any natural tendencies towards cruelty and physical violence were happily checked and softened by the spirit of mercy and sympathy inculcated by Buddhism. Men were reminded of punishment in the future life and urged to remain in the path of righteousness; they were encouraged to carry out good and benevolent works by the promise of eternal happiness in store for such deeds. The stories of nemesis reminded people of the fearful punishments for the perpetrators of crimes and sins such as cruelty, murder, injustice, robbery, adultery, unlawfulness, fraud, seduction, drunkenness, etc. Buddhism taught the people to obey the Five Commandments which are: Thou shalt not kill; thou shalt not steal; thou shalt not commit adultery; thou shalt not lie; and thou shalt not get drunk. Buddhism urges men to offer their real self to society and to the Greater Life; to find truth and reality in whatever place they shall find themselves; to submit gladly to any privation; to be ever industrious and thrifty:

and to find joy and happiness and gratitude in their daily existence.

Thus, a course of peaceful development in this corner of Asia has been made possible under the benign influence of this great religion, as history clearly indicates.

Buddhism prospered in outward appearance during the Tokugawa period extending for 250 years; it was revered by the people, who spent a greater part of their income in erecting and maintaining temples. But Buddhism of that period was in the fetters of formalism; it prospered only outwardly, it lacked in spiritual vigour and the clergy failed to put the spirit of progress, liberty and justice into their work; and thus Buddhism was in a state of decadence during the several hundred years of our feudal period.

The Meiji Restoration saw the breaking down of the formalism by which Buddhism had been made to shine in outward splendour, lacking its inward stamina. After the Restoration, Buddhism seemed to have been greatly weakened in its social and spiritual influences.

#### SECTION IV

##### BOLSHEVISM AND THE LEAGUE OF NATIONS

##### 1 Japan against Bolshevism

In the East there are moral principles inherent in its soul, religion, assured convictions, history and tradition. Especially and with emphasis must it be stated here that Japan possesses a fundamental natio-

nal polity of her own, and that this drives us in Japan to fight hard and strenuously with might and main against destructive forces such as Bolshevism and the Marxism from which the latter sprang, which if unchecked may make this spirit of the East quiver to its core. And why? Because this is a matter which offers a vital threat to our very existence as a state and nation, and is calculated to undermine the foundations of our national life.

Moreover, we must emphasize that the propagation of peace and order on paper very often leads to neglect of the idea of duty, which is an important factor in the moral teaching of the Orient.

After the Bolshevik revolution, much loss of life was sustained by the Soviet Union through frequent civil disturbances, radical changes in her economic institutions, frost, famine and epidemics. This formed a subject of regret throughout Europe, Asia and America. The causes of these disasters and calamities are evidently to be traced to Bolshevism and the activities of the Comintern. This does not concern Europe alone; all Asia will also be affected in the event of their operations extending eastwards. In point of fact Asia is already experiencing this danger. China suffered disasters of exceptional magnitude from the aggressive influence of the Bolshevik and the Communist movement; Japan rejects them.

It may be evident from the declared suppression of Communists and from the Law for the Maintenance of Peace and Order, that Japan rejects the possibility

of allowing Communists and the Comintern to have any scope to work their will within her territorial borders. However much to be admired the proposed improvement of society and the so-called reform of the social structure may be in theory, Japan has her own ideals, her own history and her own traditions, and so she cannot admit the possibility that she should be clad in the same mantle as other countries without altering the style. How can she possibly consent meekly to obey the instructions of the Comintern? Just see what results the Bolsheviks have really achieved by their so-called social revolution! Far from justifying the attempt to compel other countries to follow their example, they should be made deeply to repent of their errors and blunders. The Bolsheviks should bow down before civilized nations and beg for the benefit of some sensible advice.

Indeed, we shall not be deaf to the whisperings of pacific ideals, nor shall we raise any objection to the idea of a non-aggression treaty. Japan, therefore, affixed, in common with other nations, her signature to the Kellogg-Briand Pact, and joined the League of Nations; but how is it possible for us to maintain permanent peace and order in the Far East in sole reliance upon these at a time when the Comintern is energetically proceeding with propaganda, agitation and destructive activities throughout the world! How can Japan afford to jeopardize her own national security? Whatever exertions Japan may make towards forming closer relations with the Soviet

Government, her exertions can only be requited by gradual development of Communism. Even France, which had concluded a treaty of non-aggression and a further treaty of mutual assistance with the Soviet Union, was aggrieved by the Communist work carried on under the direction of the Comintern within the limits of her territory.

We should see the actual situation. Several millions of people in the Soviet Union have fallen victims to the political and economic revolution; and it is the recent strategy of the Comintern in China to secure foreign exclusion, resistance to Japan, the downfall of capitalism and imperialism and anti-Fascism, all combined, thus bringing into being a unified "popular front." This furnishes the means of setting one Eastern race against another. The Bolsheviki will thus be afforded an opportunity of fishing in troubled waters and of turning to their own account the outcome of the conflict. The results of such a racial conflict will be exploited by them. As it is the intention of the Bolsheviki to exploit it to their ultimate end of Bolshevizing the world, we cannot support the idea of risking the national independence, a thing of vital importance involving our very existence as a people, by any toying with political Utopias and paper pacifism.

Subsequent to the Great War international jurists have tended to regard the human race as having sprung at once into an ideal world quite independent of the actual facts of life; they are given to toying

with ideas, but they fail to pay any attention to the misery which is at their very feet. They take no account of the so-called "mental warfare" which has come to be applied to practical purposes for the first time by Bolsheviks of the school of Lenin, while their own plan is to lead humanity to its salvation by theoretical pacifism and a juridical system for the settlement of international disputes. Those men are not very different from Lenin and his followers, who profess that happiness can be imparted to the proletariat of the world by propaganda and the silent force exercised by Communistic theory, whereas in actual fact they commit homicides, burn down houses and devastate agriculture. The Communist poison is permeating every corner of the globe, and the Far East is in process of being subjected to the baleful influences of "mental warfare." In spite of this obvious feature of international life as it actually is, formalities are too often placed above reality.

We must grasp realities and fight against Bolshevism, we must reject that doctrine and keep ourselves strongly attached to our national principle at this critical moment. Years ago Spengler propounded a vital question to Japan for careful consideration. He said, "Is Japan still in the same healthy state of national life as at the time of the war with Tsarist Russia? Japan was at that time under the ruling influence of a class called *bushi* or *samurai* who had up to that time still retained their traditional pride,



who set a high value upon honour, who were brave and courageous, and who were the noblest of the noble classes throughout the world. And nowadays there are radicals in Japan, frequent strikes take place, even Bolshevik propaganda is conducted there, if we are rightly informed, and to make matters worse, the assassination of Ministers of State not infrequently occurs. At this decisive moment in the fortunes of the struggle for hegemony in the Pacific, Japan appears to have begun the descent from the culminating point of her prestige, overcome by the harmful effect of the corrosive democratic Marxism of the white races."

We should consider this question with utmost care. The civilized nations of the West cannot be so complaisant as to allow the destructive forces of Bolshevism to undermine the foundations of that culture in which they take such justifiable pride. This determination of theirs is paralleled by the equal determination of the Japanese nation, the population of which is computed at one hundred millions. The people of Japan entertain earnest hopes and aspirations for the future, but precipitation towards decline is what they energetically reject. We venture to urge pacifists and international jurists throughout the world to look realities in the face and to stand above the current international disputes, and we do so, not in the exclusive interest of the Far East, but because of our whole-hearted desire to make common cause with the intellectual community of the world for the

promotion of universal peace. We may be allowed to say that we have had occasion to observe the tragic disasters of Bolshevism with our own eyes, and this enables us to stand above considerations of national gain or loss.

The political and diplomatic confusions prevailing in the West are made a subtle excuse for an approach to or an alliance with the Bolsheviks, so as to be able to make a tool of them in case of international disputes or interested enterprises. This mentality is responsible for the creation of disorder throughout Europe, and the influence of that disorder has extended even to the Far East, in consequence of which the political life, the traditional morals, the religion and the characteristic traits evolved from the history of each nation in the Far East, nay, even their very fundamental national polity are now placed in jeopardy by the menace of Bolshevism. "Mental warfare" as viewed from the present standpoint of the Far East, and especially from that of Japan, constitutes one of the gravest questions of the day. The policy of the Comintern has precipitated the Far East into commotion, violently disturbing the whole field of its morality, traditions and beliefs. The Comintern succeed in their attempt, and are taking advantage of disputes between States in the Far East, and stimulating hostility between them. They effect the grand division between "the popular front" and the Fascist front as a means for enforcing the power of the Third International and enhancing its own force and

prestige. The Bolsheviks will then revert to Western Europe and America, and wait for their chosen opportunity to cause disaster. That is to say, the advance of the Communist movement in Asia today will mean a catastrophe in Europe and America tomorrow. Lenin once said:

“The fortunes of the world revolution will be decided in the East . . . . An assault upon Asia will soon prove an opportunity to overpower Europe.”

China now forms the pivot round which the world domination of Communist Imperialism revolves. The hundreds of millions who constitute the Chinese masses will be the prime object of the Bolshevik exploitation, because of their inexhaustible natural resources. The Bolsheviks intend there to establish a base of operations for the world revolution, and to make it stronger and stronger. They will try to bring about the decline of the national strength of the Western Powers which have extensive interests in China. This is the established and vitally important strategy of Bolshevism. The Bolsheviks are quite prepared, if necessary, to sacrifice their old ideology in the interest of that strategy. For the sake of that strategy they are even willing to surrender a footing which they have once acquired.

## 2 Japan-German Agreement

In order to guard ourselves against any danger from Communist activities we made an agreement with Germany for that purpose, which runs as follows:

The Imperial Government of Japan and the Government of Germany,

In cognizance of the fact that the object of the Communist International (the so-called Comintern) is the disintegration of, and the commission of violence against existing States by the exercise of all means at its command,

Believing that the toleration of interference by the Communist International in the internal affairs of nations not only endangers their internal peace and social welfare, but threatens the general peace of the world,

Desiring to co-operate for defence against Communistic disintegration, have agreed as follows:

#### ARTICLE I

The High Contracting States agree that they will mutually keep each other informed concerning the activities of the Communist International, will confer upon the necessary measures of defence, and will carry out such measures in close co-operation.

#### ARTICLE II

The High Contracting States will jointly invite third States whose internal peace is menaced by the disintegrating work of the Communist International, to adopt defensive measures in the spirit of the present Agreement or to participate in the present Agreement.

#### ARTICLE III

The Japanese and German texts are each valid as the original text of this Agreement. The Agreement shall

come into force on the day of its signature and shall remain in force for the term of five years. The High Contracting States will, in a reasonable time before the expiration of the said term, come to an understanding upon the further manner of their co-operation.

In witness whereof the undersigned, duly authorised by their respective Governments, have affixed hereto their seals and signatures.

Done in duplicate at Berlin, November 25th, 11th year of Showa, corresponding to November 25th, 1936.

SUPPLEMENTARY PROTOCOL TO THE AGREEMENT GUARDING  
AGAINST THE COMMUNIST INTERNATIONAL

On the occasion of the signature this day of the Agreement guarding against the Communist International the undersigned plenipotentiaries have agreed as follows:

a) The competent authorities of both High Contracting States will closely co-operate in the exchange of reports on the activities of the Communist International and on measures of information and defence against the Communist International.

b) The competent authorities of both High Contracting States will, within the framework of the existing law, take stringent measures against those who at home or abroad work on direct or indirect duty of the Communist International or assist its disintegrating activities.

c) To facilitate the co-operation of the competent authorities of the two High Contracting States as set out in a) above, a standing Committee shall be established. By this Committee further measures to be adopted to counteract the disintegrating activities of the Communist International shall be considered and conferred upon.

Done at Berlin, November 25th, 11th year of Showa, corresponding to November 25th, 1936.

### 3 Japan's Withdrawal from the League of Nations

While the policies to be pursued respecting Bolshevism and the Russian question are still in doubt, Europe has made the whole world a present of these twin problems—Bolshevism and the League of Nations. The Far East had been urged in the north by the Third International, founded by Lenin, to accept Bolshevism, while simultaneously the policy of the League of Nations was recommended to the Far East by Western Europe from the south. Thus the two conflicting ideas which have proved incapable of harmonization in international politics have plunged the East into the whirlpool in which they had already involved the West.

Japan withdrew from the League of Nations on the 27th March, 1933, when the Imperial Government published a statement announcing the step taken:

“It has been the traditional, established and unwavering policy of Japan to render due services for the promotion of world peace and the development of international culture. This policy of participation in the international work and of cooperation with other nations for the purpose of human safety and welfare shall remain consistent permanently. Japan has no such intention as to confine herself to the field of the East for secluded privacy, but Japan is determined to bring up brotherly sentiments towards her friends and to disseminate the sense of justice and equity throughout the world. However, as long as the views

entertained on Bolshevism and the policies adopted respecting the Comintern in different countries alter and vary from time to time, as long as they change with the changing observations of statesmen and politicians, and as long as they vary in response to political, military and economic considerations, Japan will incur the most serious difficulties, however unwavering her efforts may be for the furtherance of universal peace and for the development of international culture. Some determination upon a settled policy with regard to the Comintern and the solution of the Russian question was one of the obvious duties incumbent upon Europe after the Great War, yet these problems are still unresolved to-day; and the consequence is that persons asserting themselves to be representative of the working classes in Russia, and of all who are anywhere subjected to exploitation, are enabled to plunge the Far East and particularly China and Manchukuo into the raging waves of Bolshevism. In consequence, Japan was and is under the urgent necessity, whatever her own inclinations, to take what steps she considers just and proper with regard to neighbouring nations which disturb her domestic peace, when it is impossible to secure its safety merely by cooperation with the League of Nations and other Governments. It is for these reasons that, in the course of the disputes arising out of the Manchurian incident, the Imperial Japanese Government protested against the conclusion of their statement presented to the League of Nations in accordance with Para-

graph 5, Article 15, of the League Covenant:”

Communism has already invaded China, and the alarming extent and success of the invasion is far too seldom realised. A Communistic China would constitute a problem for Europe and America, beside which other questions would pale into insignificance. But a Manchuria free from Chinese connection constitutes a barrier to the Communistic danger in the Far East. Its value ought surely to be apparent to every statesman.

Several years have passed since Manchukuo was founded, but there are still nations in Europe which remain at a loss as to what attitude they ought to assume towards Bolshevism. We stand firmly against Bolshevism, and as one of the consequences Japan withdrew from the League of Nations.

The following is the Imperial Rescript which was then proclaimed in this connexion.

#### IMPERIAL RESCRIPT

“When the League of Nations came into being upon the restoration of a general peace, Our Imperial Father was pleased to order the entry of Our Empire thereinto; and We, in Our turn, have laboured assiduously to fulfil the high purpose of the late Emperor. It is thus that Our Empire has for these thirteen years past extended consistently its cooperation to the League.

“Now Manchukuo having of late been founded, Our Empire deems it essential to respect the independence of the new state and to encourage its healthy develop-



ment, in order that the sources of evil in the Far East may be eradicated and an enduring peace thereby established. Unhappily, there exists between Our Empire and the League of Nations a wide divergence of view in this regard and it has devolved upon Us to cause Our Government to take, upon mature deliberation, the necessary steps for the withdrawal of Our Empire from the League.

“However, the advancement of international peace is what, as evermore, We desire, and Our attitude towards enterprises of peace shall sustain no change. By quitting the League and embarking on a course of its own, Our Empire does not mean that it will stand aloof in the Extreme Orient nor that it will isolate itself thereby from the fraternity of nations. It is Our desire to promote mutual confidence between Our Empire and all the other Powers and to make known the justice of its cause throughout the world.

“Every country is overtaken to-day by emergencies of an unprecedented magnitude. Our Empire itself is confronted by a situation fraught with momentous possibilities. It is indeed an hour that calls for an intensification of efforts on the part of Our entire nation. We command that all public servants, whether civil or military, shall faithfully perform each his appointed duty, and that all private citizens shall pursue their wonted tasks with diligence. Stray not, in advancing, from the path of rectitude; and in action, embrace always the golden mean. Strive to meet the present situation with a united will

and with courage and resolution. So may you carry forward the glorious work bequeathed by Our Grand-sire and contribute to the prosperity and well-being of Mankind."

Hishida says, "Japan, for more than thirteen years a faithful and prominent supporter of the new principle, finally withdrew from the League in 1933, as a result of the League's recommendation in the Sino-Japanese disputes. Japan contended that the recognition of Manchukuo's independence was an essential element of national security and prerequisite of general peace in the Far East." ("Japan among the Great Powers," 1940, p. 5.)

## SECTION V

### DOUBLE STANDARD OF LIVING IN JAPAN

Modern Japan has been Westernized to a very large extent, especially in science, industry and national defence. Our home life, too, although remaining essentially faithful to tradition, has been adapted to modern needs in many ways. Thus, we work in Western-style suits, but put on *kimono* as soon as we return home. Relaxing comfortably in our loose national garb, we may squat Japanese fashion on the floor and eat from a low table, but again we may sit on a chair in front of a desk to read. Of course every home has electric lighting and the majority of us have radio-receiving sets. When we have nothing else to do, we tune in on a broadcast programme which again includes Western music or some kind of Europeanized entertainment. All this we do without the

slightest feeling of discomfort or incongruity. Everything seems so natural that we seldom stop to think how far our ways of life have been Westernized.

Japan boasts an old civilization of her own and, in addition, has recently imported an ample dose of Western culture. Of course, our national polity is peerless, and it must remain so forever. But we have nothing to lose by adopting such Western institutions as may be engrafted on our nation with salutary results.

In our daily life, too, we live in half-Japanese, half-Western style, calling it *niju-seikatsu*, or literally, two-fold life. By this we mean that things purely Japanese and those purely Western go hand in hand in our home life. In other words, these two different types of civilization exist side by side in perfect harmony in the Japanese home.

To cite notable instances, we work in foreign clothes but relax into *kimono* and sit comfortably Japanese fashion when we are through with our work. Our houses, too, are built partly in Western style. Suppose a house has ten rooms, two or three of them are usually fitted out with chairs and sofas to accommodate those who wear foreign clothes. The other rooms of course have matted floors where the family members live in the traditional manner and occasionally receive visitors clad in *kimono*. The latter can also sit on chairs with perfect ease.

Another advantage of our half-Westernized life is that we are accustomed to eat foreign as well as

Japanese food. Western-style dinners are simpler and less expensive than ours, and therefore we often give informal parties at restaurants, but we serve Japanese dinners on formal occasions or to those whom we have to treat with great respect.

In many other respects, our half-Japanese, half-foreign way of living has proved noticeably beneficial to us. Our habit of using chairs when we work in foreign clothes but sitting Japanese fashion on the matted floor while at home gives our lower limbs such good exercise that our hip muscles become much stronger than those of Westerners. I even think that our strong hips strengthen us both mentally and physically and enable us to surpass the Europeans in many ways. Our toes are also very strong as we wear *geta* held in position between the big toe and the other toes of the foot. Moreover, we can walk and run in shoes equally well.

By the way, our skill in craftsmanship comes, in my opinion, from our use of chopsticks. When only about two years old, we begin handling chopsticks so that we soon become skilful enough to eat rice, small beans, bony fish and other dishes with a pair of slippery chopsticks which we handle with only three fingers. Compared with this, a knife and fork are very easy to handle. You have only to seize them and hold them in your hands.

In any case, we retain the best part of our national civilization which we are now nourishing with the cream of what the West has to offer. Thus, our life

is becoming more and more complicated, but the complication is obviously compensated by the larger proportion of amenities it brings with it.

Perhaps the simpler life is in any land, the fewer amenities are to be enjoyed there. In India and Egypt, for instance, it is summer all the year round and the people have no use for any but light, warm-weather clothing. Their life is correspondingly simple and monotonous.

In Europe, too, seasonal changes are not noticed so distinctly. But in Japan, we welcome the return of each of the four seasons with no little enthusiasm. We enjoy flower-viewing in spring, take a *suzumi* or enjoying a cool breeze outdoors on summer evenings, have scarlet-leaves-viewing trips in autumn and snow-viewing parties in winter. We wear various kinds of *kimono* to suit the different seasons and their subdivisions, and our life thus becomes so much the more colourful and enjoyable.

Anyway, I am leading what I believe is a typical middle-class life in half-Japanese, half-foreign style. The gate of my house is an old-fashioned one reminiscent of the feudal times. It has a roof and often provides shelter for people caught in a shower. The entrance of my house is also of purely Japanese style. It is provided with a small matted room known as the *genkan*. But I read in my Western-style study. I also often offer chairs to visitors in one of my reception rooms. My grandchildren like foreign food but usually eat it from a low Japanese table in one of

our matted rooms when they visit us.

## SECTION VI

### ADMIRAL TOGO

The fact that Togo was a great warrior and that he rendered distinguished services to our country by winning the Battle of the Japan Sea as well as many other preceding battles is too well known to the public to reiterate it with my pen. The world is already flooded with books on Togo's life and activities, some of them being practically of a uniform nature, and I will not attempt to add another mite to the already superfluous reading in connexion with our naval hero, but confine myself to dealing with what I could not but admire in Togo, with whom I had the honour to come in contact during his lifetime.

To be exact, I had known Togo for forty-one years, during which period I had the pleasure of seeing him hundreds of times and naturally I have no end of things to write about him, but here I will confine myself to jotting down only a few, relegating the rest to some future date.

Without vanity I may say that I am one of those few, who, next to his relatives, his Satsuma friends, and navy men, had the longest and most intimate intercourse with him, and I sincerely thank my lot for it. The only thing I regret now is that with all such a long intercourse with him, I could not very well perfect myself after the true gentleman that he

was.

I saw Togo for the first time when the sinking of the British steamer *Kaosheng* chartered by the Chinese army during the Sino-Japanese War gave rise to hot disputes both at home and England pro and contra the action of Captain Togo, Commander of the *Naniwa*, at whose hands that transport was destroyed in the Yellow Sea.

In those days even our Government's high officials were too much blinded by the fear of Britain to see clearly their way to forming a right judgment as to the incident. I happened then to be acting as legal adviser to the navy department. I had been connected with it since the preceding year, i.e., 1893, when legal and diplomatic disputes between Japan and Britain arising from the collision between the Japanese warship *Chishima* and the British merchantman *Ravenna* in the Seto Inland Sea called me to the department to act as legal adviser.

My investigation of the circumstances that led to the collision between the *Chishima* and the *Ravenna* caused me to attend an international maritime law conference held in 1899 in London and another held in Paris in the following year, and to present at the conferences a bill relating to collisions between a warship and a merchant vessel. I wrote a book on the subject in 1900 in London and presented the sovereigns, presidents, and statesmen of the world with copies of my book.

The then Navy Minister, Admiral Saigo, requested me through his secretary Captain Yamamoto (later

Prime Minister and Admiral) to give my opinion on the sinking of the *Kaosheng*.

Basing my opinion on my long-cherished conviction as to the doctrine of possession of a ship, I gave in effect the following comment: "When Captain Togo sank the *Kaosheng*, her possession belonged to the enemy, as she had been chartered (demised) to the Chinese government and taken over by its army. It was then the Chinese government that was the *pro tempore* owner of the ship. From this point of view the Japanese navy was at liberty to capture her or sink her if necessary. 'But international proceedings and other diplomatic matters should not be lost sight of in disposing of such a ship as she was. I consider Captain Togo's action legally right and proper, provided that he has attended to what international law requires on such an occasion. I am yet to be supplied with particulars as to this matter from Captain Togo."

Captain Yamamóto said, "One may safely assume that Togo has attended properly to that sort of thing."

The present writer had entertained settled convictions on such questions long before the incident occurred, and had published a number of pamphlets on the subject. In 1923 I spoke on it at the International Maritime Conference at Stockholm and wrote a book entitled "Immunity of State Ship," and distributed copies of the same among the sovereigns, presidents, scholars, and statesmen of the world.

I do not know how far my views on the question affected the Navy Minister and the other Cabinet Ministers generally. But this much I know for certain that the



view of Dr. Westlake and Dr. Holland, authorities on international law, who wrote in defence of the sinking of the *Kaosheng*, served to alleviate the heated public opinion against it and to remove the charge against the Japanese government.

Three years later, i.e., in 1897, I went over to England and saw these scholars themselves and asked their views on the question. I availed myself of this opportunity to pay a visit to Dr. Lawrence, who held views opposite to those of the two scholars and examined in detail upon what basis his views were founded. I saw that he had no correct knowledge of the case in certain points and I explained to him all the facts that I knew about it.

When Captain Togo came home for the first time after the incident, I shared the same room in the office with Captain Yamamoto. He said to me, "I say, Matsunami, Togo will soon arrive at the pier. Suppose we go and meet him."

"Then we two hastened out and got to the pier where Captain Togo had just set foot from a launch.

"Well done, Togo!" cried Captain Yamamoto grasping the hero by the hand.

"Ah!" was all that Captain Togo said in answer.

"Meet Mr. Matsunami, a young scholar of maritime law. We got him to investigate the matter relating to the sinking of the *Kaosheng*; he has supplied us with a valuable view upon the question."

Making a bow I said to Captain Togo, "I did all that lay in my power to investigate the matter and have come to the conclusion that you are right in what you have done."

"I did it because I thought it right," the captain said modestly, "but I feel easier when I am assured by a scholar."

I felt very humble when he addressed me in such a respectful manner as only a more experienced scholar would have been entitled to.

Then I followed both captains along the pier, and going into a room together, we talked over the subject at some length. This was the first time that I had the honour of talking with our hero, the sinking of the *Kaosheng* serving as the means for me to make his acquaintance. Whenever the three of us came together afterwards, we would allude to this first interview. When I first saw him, I knew that he valued learning and at the same time I felt that there was something of the educationist in him. My first impression of the hero proved later to be correct.

After the Sino-Japanese War the Japanese navy thought it of the most urgent necessity to have able officers, especially those who would make excellent commanders. With this object in view a great renovation was effected in the Naval College in the following year, i.e., 1896. Rear-Admiral Togo, the former captain of the *Naniwa*, was appointed director of the college, Commander Hayao Shimamura (later Fleet-Admiral Shimamura, Chief of the Naval General Staff) and Commander Tomosaburo Kato (later Fleet-Admiral Kato, Navy Minister and Premier) being appointed professors of tactics. All the other professors were able men and I felt it a great honour to

be included in the brilliant staff, because in those days I happened to be the only man who had specialized in naval and maritime law.

At any rate, as a professor under Director Togo I saw him practically every day and worked according to his instructions. Sometimes I offered him my suggestions and occasionally those that ran counter to his. We often shared the same table and talked over our meal about various topics. Sometimes he would entertain us with war talks and at other times he told us how he had spent his life in England. During our talks we were unconsciously influenced by his noble character, and I suppose that Commanders Kato and Shimamura had specially profited by their daily contact with the great Director. They both were to serve brilliantly under Togo in the Russo-Japanese War.

When I first came to work under Togo, he said to me, "Mr. Matsunami, I hope you understand that these students are to be grand officers in the future." I was made to reflect upon myself, and wondered if I could be equal to the task of instructing those brilliant officers. I felt somehow that I did not deserve my post, but on second thought, I decided that I would do what I could, and did my best.

Sure enough, the students were all brilliant. Among the rest were Lieutenants Keisuke Okada (later Premier and Admiral), Hyo Takarabe (later Minister of the Navy), Kantaro Suzuki (later Admiral Suzuki, former Chief of the Naval General Staff) and

others who all became admirals in after years. The famous Takeo Hirose who was killed at Port Arthur was also among the number.

Besides naval training, Togo was interested in matters relating to courts martial. I remember how at ten on the morning of Dec. 15th in 1896 he summoned me into the Director's room and said, "Mr. Matsunami, I hope you will let the students know something about courts martial." This is because I had been teaching the naval penal code besides international and maritime law.

In those days few paid attention to courts martial. When I received this instruction from Director Togo I applied myself to the study of books on courts martial and frequently visited a public court-house and a martial court-house, not to speak of naval prisons as well as ordinary ones. I prepared my teaching materials on courts martial on all these studies and observations of mine as best I could. About twenty years later the Siemens case called for the opening of a court martial and later the May 15th case called for another. On both occasions I attended the hearings and thought of the Director's words at that time and realized that he had a foresight denied to most people in those days. And then I thought of the sinking of the *Kaosheng* and was convinced that it was this invaluable trait of his that made him free from all blame in daring to sink that vessel. By the way I may add that it was through Director Togo that my first Court rank, the junior seventh rank, was

conferred upon me, and every time I was honoured with any further title I thought of the first occasion on which I had the honour.

So much for my impression of Togo viewed from an educational point of view. Now I will write about his idea with regard to the sense of responsibility. It is so well known how Togo valued his duties that I need hardly take the trouble to dwell upon it. Suffice it for me to relate a couple of instances that bear testimony to his great sense of responsibility.

Surrounded by the sea on all sides our island empire stands in absolute need of submarines. Submarines have often been lost by collision or damaged by rough waves both at home and abroad. Once a submarine under the command of Lieutenant Sakuma sank in the Seto Inland Sea. Each member of the crew then did his duties to the best of his ability until he breathed his last. As for the commander himself, besides issuing orders to his men, he minutely observed the manner in which the ill-fated ship plunged beneath the waves, how water rushed in, and how the air inside was affected by gases, taking detailed notes of his observations for future reference. Then he humbly apologized to the Emperor for the loss of the submarine he commanded and asked the naval authorities to take care of the bereaved families of his men. At last he closed his eyes forever after having done all the commander had to do. On hearing of this mark of his loyalty and his high sense of responsibility, there was not a single man but was

moved to tears.

Greatly impressed, the present writer paid a visit to Togo at that time (it was only a five minutes' walk to Togo's residence from mine and I would often call on him) and said how I was struck with admiration for Lieutenant Sakuma.

"He did his duty, that's all," was Togo's laconic comment.

It was but too true, but I wondered how many would have been capable of doing their duty so well if they had been placed in the same predicament. Had it not been Togo, I should have been offended at the callousness of the comment. As a matter of fact, Togo, who did always his best in performing his duties, found nothing new in what the commander of the doomed vessel had done, and he made the afore-said remark without the slightest shade of affectation. I found myself lowering my head and reflected if I had always been doing my utmost in performing my duties.

After winning the overwhelming victory in the Battle of the Japan Sea, Commander-in-Chief Togo had returned in triumph to Tokyo Bay at the head of his whole fleet and immediately proceeded to the Imperial Palace to submit particulars of the engagement to the Emperor. The victorious vessels arrayed themselves off Yokohama solemnly awaiting the following day when they were to be reviewed by the Emperor. No outsider was to be admitted until the function was over.

Persons connected with the Navy Department or the Naval Staff Office, however, visited the fleet on official business. Being connected with the Naval College and the Navy Department, the present writer thought it his duty to visit the fleet as soon as possible. He went down to Yokohama not so much on personal considerations as on account of his official duties.

There in the harbour lay at anchor in an impressive array the vessels that had returned victorious from the Battle of the Japan Sea. I was fortunate enough to be carried by launch to the flag-ship *Shikishima*, which had replaced the *Mikasa*. I was met on board by Rear-Admiral Tomosaburo Kato, Chief of the Staff (later Fleet-Admiral Kato), who hailed me cheerfully, "Well, well, I'm delighted to see you, Mr. Matunami."

I thanked him formally, not as one of his former colleagues but as a grateful citizen for his long sustained duties at sea and congratulated him on a series of victories and especially on the crowning victory in the Battle of the Japan Sea.

Soon the Chief Engineer, the Chief Accountant, and the Chief Surgeon came to see me one after another. We all used to be colleagues at the Naval College under Director Togo eight years before and some of us jokingly said that one might almost think that the Naval College was removed from Tsukiji to the offing of Yokohama.

I conveyed my wish to see Commander-in-Chief Togo through the Chief of the Staff and was told that he would see me at once. Then I went alone to

his cabin, where I found him solemnly standing ready to receive me. I stopped at a point six steps away from the Commander-in-Chief, and, bowing respectfully, gave my thanks for his past duties and in brief words congratulated him on his glorious victory.

His answer was simply, "That's mutual."

I did not exactly know what he meant by this, but I interpreted it to mean a great deal. He apparently meant to say that everyone had been attending to his duties, not only Togo but Matsunami. As for the congratulations on the victory won by his fleet, it was not to be monopolized by the navy but by the Japanese public at large—an honour to be mutually shared by everyone. Besides, the word was significant to me in many other ways. Togo's attitude then was naive and calm, and not a bit overbearing. Putting no gulf between himself and me, I felt quite at ease in his presence.

Somehow his manner of receiving me suggested a meeting between old chums.

"Hallo! Are you all right these days, old mán?"

"Thanks. Ripping."

"Let's work as steadily and surely as ever!"

"You said it! And let's take care of our health."

I felt it a great honour to be placed on the same footing with the naval hero. I also felt myself attached to him by his friendly attitude.

In the evening I had the privilege to share the same table with the Commander-in-Chief, Chief of the Staff Kato, Staff Officer Akiyama, and the rest



of my former colleagues. They supplied me over a frugal meal with sufficient details as to the Battle of the Japan Sea and other preceding battles. I was audacious enough to forget my own position as a humble guest in enjoying the meal, and took my leave of them all at six, full of thanks and happiness.

The following episode may show how unassuming Togo was in life. One day I gave a dinner in honour of Togo at my house at Nakacho, Ushigome, Tokyo, inviting a dozen of my superiors. The following day Togo called at my house to thank me for the dinner. Unfortunately I was out at that time. My maid fresh from the country met him at the door and asked, "Your name, please?"

"Togo is my name," was the answer.

"Your full name, sir?" asked the stupid girl.

"Heihachiro Togo," he replied.

"Your business, sir?"

"I've come to thank your master for his kind hospitality yesterday," he said in a kind and gentle tone.

"I'm sorry the master is out to-day." "Come another time," the maid concluded.

The late Fleet-Admiral Togo had behaved so like a kindly obscure old man towards the maid that she had probably not taken the name seriously.

That he devoted himself to study and culture as long as he lived is well known to the world and I myself know this from my personal contact with him. Every time I visited him I asked him several questions and he in his turn put me some questions.

My comment on the sinking of the *Kaosheng* having been the means of our coming in contact with each

other, our topic naturally came to be academic, the more so as I used to work under him as professor of law. His questions were always to the point, though he was not interested in details, unlike Admiral Yamamoto, who liked to go deeper and deeper into a matter by asking one question after another. The late Fleet-Admiral put curt questions and talked little.

It is true that Togo had a natural propensity to learning, but I feel confident that he applied himself to it mainly from his unequalled loyalty and patriotism. I was once ashamed of myself in his presence in this connexion. One day I paid a visit to him intending to have a talk with him at leisure. Then I happened to say to him, "I suppose you are free these days."

He was then a naval councillor. I had taken it for granted that a councillor had much spare time.

"I'm not!" returned the Fleet-Admiral, contrary to my expectation.

"How's that?" I asked.

"I must always keep my attention to matters relating to the navy. I could never forgive myself if I neglected my duty towards His Majesty. I run my eyes over all the papers brought by the adjutant."

I was moved. When I heard the words "towards His Majesty" from the lips of the austere silent Fleet-Admiral, I felt as if I had received a stunning blow on the back. This expression used by him showed that it was his loyalty that made him studious at the advanced age—he was then about eighty years old.

Then I decided that I should try to follow his example as best I could.

The last time I saw the late Fleet-Admiral was when he was eighty-seven years old, the year before he passed away. Hearing that he was suffering from cold, I went to inquire after him. I was told at the door that his illness was not very serious and that he was almost himself again. Glad to hear that the worst was over, I took my leave and was going out of the gate when some one ran after me and said, "The master is anxious to see you. Could you come and see him?"

Of course I should be only too glad to see him. I was soon ushered into the drawing-room, where the Fleet-Admiral dressed in a plain *kimono* and *hakama* as usual had been waiting for me. Inquiring about his health I said, "I hope you will take great care of yourself. Your health is precious to the whole nation."

"Thanks," he replied.

Then we talked of our good old days.

"It's a long time since I made your acquaintance, Mr. Matsunami," said the Fleet-Admiral.

"It's just forty years," I replied. "I had the pleasure of seeing you in 1894 when the sinking of the *Kaosheng* created a sensation."

"Ah, I remember it yet. You and Yamamoto came to meet me at the pier," said he reflectively.

"All the great naval men of those days but you and Admiral Yamamoto have gone," said I.

"Hidaka is still alive."

"Ah, yes, Admiral Hidaka is alive, to be sure. But Shimamura and Kato (two Fleet Admirals) who were to have been your successors are gone. It's a great loss, isn't it?"

"It is. They used to drink too much."

"You were not an exception to the rule, so far as that goes, I understand?"

The Fleet-Admiral gave a laugh.

Thus assuming a serious attitude I put a question (which I later thought was a silly one) to him, "I think that you felt at once anxious and grand as you commanded the Japanese Combined Fleet on board the *Mikasa* in the Battle of the Japan Sea. Am I right?"

"Well!" was the only answer he gave.

"Could you command a grand fleet even now?" I asked further.

"I could!" he answered without the least hesitation. "Only I should find it hard to go up to the bridge."

"Could you find it easy to command, if you were to be helped up to the bridge?" I asked.

"That I could," was his instant reply.

The Fleet-Admiral gave me this assurance when he was eighty-seven years of age. I should perhaps have been unable to put entire confidence in this assurance if it had come from any other person. But I could believe any word from Fleet-Admiral Togo, the naval sage, who did not utter a single word that he did not mean.

I was moved to tears in spite of myself. As I write this I see vividly in my mind's eye the scene in which the eighty-seven year-old Fleet-Admiral gave me this memorable assurance that he could still command a grand fleet.



## Appendix I

### The Japanese Constitution

#### Japanese Text

#### 第一章 天皇

第一條 大日本帝國ハ萬世一系ノ天皇之ヲ統治ス

第二條 皇位ハ皇室典範ノ定ムル所ニ依リ皇男子孫之ヲ繼承ス

第三條 天皇ハ神聖ニシテ侵スヘカラス

第四條 天皇ハ國ノ元首ニシテ統治權ヲ總攬シ此ノ憲法ノ條規ニ依リ之ヲ行フ

第五條 天皇ハ帝國議會ノ協贊ヲ以テ立法權ヲ行フ

第六條 天皇ハ法律ヲ裁可シ其ノ公布及執行ヲ命ス

第七條 天皇ハ帝國議會ヲ召集シ其ノ開會閉會停會及衆議院ノ解散ヲ命ス

第八條 天皇ハ公共ノ安全ヲ保持シ又ハ其ノ災厄ヲ避ケル爲緊急ノ必要ニ由リ帝國議會閉會ノ場合ニ於テ法律ニ代ルヘキ勅令ヲ發ス

此ノ勅令ハ次ノ會期ニ於テ帝國議會ニ提出スヘシ若議會ニ於テ承諾セサルトキハ政府ハ將來ニ向テ其ノ效力ヲ失フコトヲ公布スヘシ

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得ス

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及文武官ヲ任免ス但シ此ノ憲法又ハ他ノ法律ニ特例ヲ  
掲ケタルモノハ各々其ノ條項ニ依ル

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第十四條 天皇ハ戒嚴ヲ宣告ス

戒嚴ノ要件及效力ハ法律ヲ以テ之ヲ定ム

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均ク文武官ニ任セラレ及其ノ他ノ公務ニ就クコトヲ得

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ヲ有ス

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第二十五條 日本臣民ハ法律ニ定メタル場合ヲ除ク外其ノ許諾ナクシテ住所ニ侵入セラレ及搜索セラル、コトナシ

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第四十九條 兩議院ハ各々天皇ニ上奏スルコトヲ得

第五十條 兩議院ハ臣民ヨリ呈出スル請願書ヲ受クルコトヲ得

第五十一條 兩議院ハ此ノ憲法及議院法ニ掲クルモノノ外内部ノ整理ニ必要ナル諸規則ヲ定ムルコトヲ得

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第六十四條 國家ノ歲出歲入ハ毎年豫算ヲ以テ帝國議會ノ協贊ヲ經ヘシ

豫算ノ款項ニ超過シ又ハ豫算ノ外ニ生シタル支出アルトキハ後日帝國議會ノ承諾ヲ求ムルヲ要ス

第六十五條 豫算ハ前ニ衆議院ニ提出スヘシ

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第六十七條 憲法上ノ大權ニ基ツケル既定ノ歲出及法律ノ結果ニ由リ又ハ法律上政府ノ義務ニ屬スル歲出ハ政府ノ同意ヲクシテ帝國議會之ヲ廢除シ又ハ削減スルコトヲ得ス

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確定シ政府ハ其ノ検査報告ト俱ニ之ヲ帝國議會ニ提出  
スヘシ

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キハ勅命ヲ以テ議案ヲ帝國議會ノ議ニ付スヘシ

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席スルニ非サレハ議事ヲ開クコトヲ得ス

出席議員三分ノ二以上ノ多數ヲ得ルニ非サレハ改正ノ  
議決ヲ爲スコトヲ得ス

第七十四條 皇室典範ノ改正ハ帝國議會ノ議ヲ經ルヲ要セ  
ス

皇室典範ヲ以テ此ノ憲法ノ條規ヲ變更スルコトヲ得ス

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ラス此ノ憲法ニ矛盾セサル現行ノ法令ハ總テ遵由ノ效  
力ヲ有ス

歲出上政府ノ義務ニ係ル現在ノ契約又ハ命令ハ總テ第  
六十七條ノ例ニ依ル

## English Translation

### CHAPTER I. THE EMPEROR

- Art. 1 The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.
- Art. 2 The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.
- Art. 3 The Emperor is sacred and inviolable.
- Art. 4 The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them according to the provisions of the present Constitution.
- Art. 5 The Emperor exercises the legislative power with the consent of the Imperial Diet.
- Art. 6 The Emperor gives sanction to laws, and orders them to be promulgated and executed.
- Art. 7 The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.
- Art. 8 The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of Law.

Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and in case the Diet does not approve the said Ordinances,

the Government shall declare them to be invalid for the future.

Art. 9 The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the law, for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Art. 10 The Emperor determines the organization of the different branches of the administration, and the salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions bearing thereon.

Art. 11 The Emperor has the supreme command of the Army and Navy.

Art. 12 The Emperor determines the organization and peace standing of the Army and Navy.

Art. 13 The Emperor declares war, makes peace, and concludes treaties.

Art. 14 The Emperor proclaims the law of siege. The conditions and effects of the law of siege shall be determined by law.

Art. 15 The Emperor confers titles of nobility, rank, orders and other marks of honour.

Art. 16 The Emperor orders amnesty, pardon, commutation of punishments, and rehabilitation.

Art. 17 A Regency shall be instituted in conformity with the provisions of the Imperial House Law.



The Regent shall exercise the powers appertaining to the Emperor in His name.

## CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

- Art. 18 The conditions necessary for being a Japanese subject shall be determined by law.
- Art. 19 Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices without discrimination.
- Art. 20 Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.
- Art. 21 Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.
- Art. 22 Japanese subjects shall have the liberty of abode and of changing the same within the limits of law.
- Art. 23 No Japanese subject shall be arrested, detained, tried, or punished, unless according to law.
- Art. 24 No Japanese subject shall be deprived of his right of being tried by judges determined by law.
- Art. 25 Except in cases provided for by law the house of no Japanese subject shall be entered or searched without his consent.
- Art. 26 Except in cases provided for by law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Art. 27 The right of property of every Japanese subject shall remain inviolate.

The measures necessary to be taken for the public benefit shall be provided by law.

Art. 28 Japanese subjects shall, within limits not prejudicial to peace and order, nor antagonistic to their duties as subjects, enjoy freedom of religious belief.

Art. 29 Japanese subjects shall within the limits of law, enjoy the liberty of speech, writing, publication, public meeting, and association.

Art. 30 Japanese subjects may present petitions, observing the proper forms of respect, and complying with the rules specially provided for the same.

Art. 31 The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in time of war or in cases of national emergency.

Art. 32 Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

### CHAPTER III. THE IMPERIAL DIET

Art. 33 The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Art. 34 The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the Members of the Imperial Family, of the orders of nobility, and of those persons who have been nominated thereto by the Emperor.

Art. 35 The House of Representatives shall be composed of Members elected by the people according to the provisions of the Law of Election.

Art. 36 No one can at one and the same time be a member of both Houses.

Art. 37 Every law requires the consent of the Imperial Diet.

Art. 38 Both Houses shall vote upon projects of law submitted to them by the Government, and may respectively initiate projects of law.

Art. 39 A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.

Art. 40 Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Art. 41 A session of the Imperial Diet shall be convoked every year.

Art. 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by Imperial Order.

Art. 43 When urgent necessity arises, an extra-

ordinary session may be convoked, in addition to the ordinary one.

The duration of an extraordinary session shall be determined by Imperial Order.

Art. 44 The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Art. 45 When the House of Representatives has been ordered to dissolve, the Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Art. 46 No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one-third of the whole number of the Members thereof is present.

Art. 47 Votes shall be taken in both Houses by absolute majority. In the case of a tie, the President shall have a casting vote.

Art. 48 The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the Houses, be held in secret.

Art. 49 Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Art. 50 Both Houses may receive petitions presented by subjects.

Art. 51 Both Houses may enact, besides what is provided for in the present Constitution and in the law of the Houses, rules necessary for the management of their internal affairs.

Art. 52 No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Art. 53 The Members of both Houses shall, during session, be free from arrest, unless with the consent of the Houses, except in cases of flagrant derelicts, or of offences connected with a state of internal commotion or with foreign trouble.

Art. 54 The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

#### CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL

Art. 55 The respective Ministers of State shall give their advice to the Emperor and be responsible for it.

All Laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the countersignature of a Minister of State.

**Art. 56** The Privy Council shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of the State, when consulted by the Emperor.

#### CHAPTER V. THE JUDICATURE

**Art. 57** The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

The organization of the Courts of Law shall be determined by law.

**Art. 58** The judges shall be appointed from among those who possess qualifications according to law. No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

Rules for disciplinary punishment shall be determined by law.

**Art. 59** Trials and judgments of a Court shall be conducted publicly. When, however, there exist any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provisions of law or by decision of the Court of Law.

**Art. 60** All matters that fall within the competency of a special Court shall be specially provided for by law.

**Art. 61** No suit at law, which relates to rights alleged to have been infringed by the illegal

measures of the executive authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognizance of by a Court of Law.

#### CHAPTER VI. FINANCE

Art. 62 The imposition of a new tax or the modification of the rates of an existing one shall be determined by law.

However, administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause.

The raising of national loans and the contracting of other liabilities on the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Art. 63 The tax levies as at present shall, in so far as not remodelled by new law, be collected according to the old system.

Art. 64 The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget.

Any and all items of expenditure beyond the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Art. 65 The Budget shall be first laid before the

House of Representatives.

- Art. 66 The expenditure of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount of the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.
- Art. 67 The already fixed items of expenditure based by the Constitution upon the powers appertaining to the Emperor, and such expenditure as may have arisen by the effect of law, or that appertains to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.
- Art. 68 In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.
- Art. 69 In order to supply deficiencies which are unavoidable in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.
- Art. 70 When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures by means of an Imperial Ordinance.



In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Art. 71 When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Art. 72 The final account of the expenditure and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

## CHAPTER VII. SUPPLEMENTARY RULES

Art. 73 In case it shall become necessary in future to amend the provisions of the present Constitution, a project to that effect shall be submitted to the Imperial Diet by Imperial Order.

In the above case, neither House can open the debate, unless not less than two thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Art. 74 No modification of the Imperial House Law shall be required to be submitted to the delibera-

tion of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

**Art. 75** No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

**Art. 76** Existing legal enactments, such as laws, regulations, ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Art. 67.

## French Translation

### CHAPTER I. DE L'EMPEREUR

- Art. 1 L'Empire du Japon est régné et gouverné par l'Empereur (Tenno) dont la dynastie est unique et reste sans interruption dans l'éternité.
- Art. 2 Le trône impérial se transmet aux descendants mâles de l'Empereur, conformément aux dispositions du Statut fondamental de la Maison impériale.
- Art. 3 L'Empereur est sacré et inviolable.
- Art. 4 L'Empereur est le chef suprême de l'Empire. Il possède la souveraineté et l'exerce conformément aux dispositions de la présente Constitution.
- Art. 5 L'Empereur exerce le pouvoir législatif avec le concours de la Diète impériale.
- Art. 6 L'Empereur sanctionne les lois ; il en ordonne la publication et l'exécution.
- Art. 7 L'Empereur convoque la Diète impériale, l'ouvre, la clôt et la proroge, et dissout la Chambre des représentants.
- Art. 8 L'Empereur édicte des ordonnances tenant lieu des lois, en cas où la Diète impériale n'est pas réunie et où il y a la nécessité imminente de maintenir l'ordre public ou d'éviter des calamités publiques. Ces ordonnances doivent être soumises à la Diète impériale dans la session suivante. Si la Diète impériale ne les approuve pas, le gouvernement doit les déclarer caduques pour l'avenir.

Art. 9 L'Empereur édicte ou fait édicter les ordonnances nécessaires pour exécuter des lois ou maintenir la paix et l'ordre publics et accroître du bien-être de ses sujets. Aucune ordonnance ne peut modifier d'aucune façon les lois existantes.

Art. 10 L'Empereur détermine l'organisation de toutes les branches de l'administration, nomme et révoque tous les officiers civils et militaires, et fixe leur traitement, sauf à tenir compte des exceptions prévues par la présente Constitution ou par d'autres lois.

Art. 11 L'Empereur a le suprême commandement de l'armée et de la marine.

Art. 12 L'Empereur détermine l'organisation et fixe l'effectif de paix de l'armée et de la marine.

Art. 13 L'Empereur déclare la guerre, fait la paix et conclut les traités.

Art. 14 L'Empereur déclare l'état de siège.

Les conditions et les effets de l'état de siège seront déterminés par la loi.

Art. 15 L'Empereur confère les titres de noblesse, les rangs, les ordres et les autres distinctions honorifiques.

Art. 16 L'Empereur prononce l'amnistie, la grâce, la commutation de peines et la réhabilitation.

Art. 17 Une régence pourra être instituée conformément aux dispositions du Statut fondamental de la Maison impériale.

Le régent exercera les pouvoirs suprêmes au nom de l'Empereur.

## CHAPITRE II. DROITS ET DEVOIRS DES SUJETS

- Art. 18 Les conditions requises pour être sujet japonais seront déterminées par la loi.
- Art. 19 Tout sujet japonais remplissant les conditions déterminées par les lois ou ordonnances, peut être nommé aux fonctions civiles ou militaires ou à tout autre emploi public.
- Art. 20 Les sujets japonais sont astreints au service dans l'armée ou la marine conformément aux dispositions de la loi.
- Art. 21 Les sujets japonais sont astreints aux obligations de payer les impôts conformément aux dispositions de la loi.
- Art. 22 Les sujets japonais ont la liberté d'établir et de changer leur résidence dans les limites prévues par la loi.
- Art. 23 Aucun sujet japonais ne sera arrêté, détenu, jugé ou puni que conformément aux lois.
- Art. 24 Aucun sujet japonais ne pourra être privé du droit d'être jugé par tribunaux que détermine la loi.
- Art. 25 Nul ne pourra, sauf dans les cas prévus par la loi, pénétrer dans la demeure d'un sujet japonais ou y faire des perquisitions, sans son assentiment.
- Art. 26 Sauf dans les cas prévus par la loi, le secret des correspondances de tout sujet japonais demeurera inviolable.
- Art. 27 Le droit de propriété des sujets japonais est

inviolable.

Les mesures nécessaires en vue de l'intérêt public seront déterminées par la loi.

Art. 28 Tout sujet japonais jouira de la liberté de la croyance religieuse, dans les limites où, elle ne préjudice pas à la paix et à l'ordre publics et où elle n'est pas incompatible avec ses devoirs de sujet.

Art. 29 Tout sujet japonais jouira, dans les limites déterminées par la loi, du droit de parler, d'écrire, de se réunir publiquement et de s'associer.

Art. 30 Tout sujet japonais pourra présenter des pétitions sous une forme respectueuse et en se conformant aux règles spécialement établies à ce sujet.

Art. 31 Les dispositions du présent chapitre ne pourront faire obstacle à l'exercice du pouvoir suprême appartenant à l'Empereur, en temps de guerre ou au cas de péril national.

Art. 32 Toutes les dispositions du présent chapitre seront appliquées aux officiers et soldats en tant qu'elles ne sont pas en contradiction avec les lois, les ordonnances et la discipline, concernant l'armée et la marine.

### CHAPITRE III. DE LA DIÈTE IMPÉRIALE

Art. 33 La Diète impériale sera composée de deux Chambres, une Chambre des pairs et une Chambre des représentants.

Art. 34 La Chambre des pairs sera composée con-

formément à l'Ordonnance sur la Chambre des pairs, des princes de la famille impériale et des nobles, ainsi que des membres nommés par l'Empereur.

Art. 35 La Chambre des représentants sera composée des membres élus par le peuple, conformément aux dispositions de la loi électorale.

Art. 36 Nul ne peut être à la fois membre des deux Chambres.

Art. 37 Aucune loi ne peut être faite sans le consentement de la Diète impériale.

Art. 38 Les deux Chambres voteront sur les projets de loi soumis par le gouvernement. Chacune d'elles aura, en outre, le droit d'initiative.

Art. 39 Un projet de loi qui a été rejeté par une des deux Chambres ne pourra être présenté de nouveau au cours de la même session.

Art. 40 Chacune des deux Chambres peut faire des propositions au gouvernement sur les lois ou sur toutes affaires. Si, toutefois, ces propositions ne sont pas agréées, elles ne pourront être présentées de nouveau au cours de la même session.

Art. 41 La Diète impériale sera convoquée tous les ans.

Art. 42 La session de la Diète impériale durera trois mois. En cas de nécessité, la durée de la session pourra être prolongée par l'ordre de l'Empereur.

Art. 43 En cas de nécessité fortuite et urgente, une session extraordinaire pourra être convoquée en dehors de la session ordinaire.

La durée de la session extraordinaire sera déterminée par l'ordre impérial.

Art. 44 L'ouverture, la clôture, la prolongation de la session et la prorogation de la Diète impériale devront s'effectuer simultanément pour les deux Chambres.

En cas de dissolution de la Chambre des représentants, la Chambre des pairs sera en même temps prorogée.

Art. 45 Quand la dissolution de la Chambre des représentants aura été prononcée, il sera nécessaire par l'ordre impérial, de procéder à de nouvelles élections, et la nouvelle Chambre sera convoquée dans cinq mois à partir du jour de la dissolution.

Art. 46 Aucun débat ne peut être ouvert, ni aucun vote ne peut avoir lieu dans l'une ou l'autre Chambre, si le tiers au moins du nombre total des membres de la Chambre n'est pas présent.

Art. 47 Dans l'une et l'autre Chambre, les résolutions sont prises à la majorité. Au cas de partage de voix, la voix du président est prépondérante.

Art. 48 Les délibérations des deux Chambres seront publiques. Toutefois une Chambre peut, ou sur la demande du gouvernement ou par sa propre décision, se réunir en séance secrète.

Art. 49 Chaque Chambre pourra présenter des adresses à l'Empereur.

Art. 50 Chaque Chambre pourra recevoir les pétitions présentées par les sujets.

Art. 51 Chaque Chambre pourra, en dehors des



dispositions de la présente Constitution et de la loi sur les Chambres, faire son règlement nécessaire pour son fonctionnement intérieur.

Art. 52 Aucun membre de l'une ou l'autre Chambre ne sera tenu pour responsable, en dehors de la Chambre à laquelle il appartient, à raison des opinions et votes par lui émis dans cette Chambre. Toutefois, si un membre a donné lui-même quelque publicité à ses opinions par des discours, par la presse, par des écrits ou par tout autre moyen, les lois communes lui seront applicables.

Art. 53 Aucun membre des deux Chambres ne pourra être arrêté, dans le cours d'une session, sans le consentement de la Chambre à laquelle il appartient, sauf le cas de flagrant délit ou d'infraction connexe à un trouble intérieur ou extérieur.

Art. 54 Les ministres d'État et les commissaires du gouvernement pourront à tout moment siéger et prendre la parole dans l'une ou l'autre Chambre.

#### CHAPITRE IV. DES MINISTRES D'ÉTAT ET DES CONSEILLERS PRIVÉS

Art. 55 Chacun des ministres d'Etat donne son avis à l'Empereur et en est responsable.

Toutes les lois, toutes les ordonnances, et tous les actes impériaux qui se réfèrent aux affaires de l'Etat, devront être contresignés par les ministres d'Etat intéressés.

Art. 56 Les conseillers privés délibéreront, conformément aux dispositions du règlement organique du

Conseil privé, sur les affaires publiques importantes, quand ils auront été consultés par l'Empereur.

## CHAPITRE V. DE L'AUTORITÉ JUDICIAIRE

Art. 57 Le pouvoir judiciaire sera exercé par les tribunaux au nom de l'Empereur, conformément aux lois.

L'organisation des tribunaux sera réglée par la loi.

Art. 58 Les juges seront choisis parmi les hommes réunissant les conditions déterminées par la loi.

Aucun juge ne pourra être révoqué qu'en vertu d'une condamnation pénale ou d'une mesure disciplinaire.

Les règles relatives aux mesures disciplinaires seront déterminées par la loi.

Art. 59 Les audiences et jugements des tribunaux seront publics. Toutefois, s'il y a à craindre un certain danger pour l'ordre et la sécurité ou pour la moralité publique, la publicité des audiences pourra être suspendue par une disposition de loi ou une décision du tribunal.

Art. 60 Toutes les matières rentrant dans la compétence des tribunaux spéciaux seront déterminées particulièrement par la loi.

Art. 61 Les tribunaux judiciaires ne pourront connaître d'aucune action consistant à prétendre qu'un droit a été violé par les mesures illégales des autorités administratives et qui rentre dans

la compétence du tribunal administratif spécialement établi par la loi.

## CHAPITRE VI. DES FINANCES

Art. 62 La création de nouveaux impôts ou la modification des impôts déjà établis ne peut être effectuée que par une loi.

Toutefois, les taxes administratives et autres revenus ayant le caractère de rétribution ne rentrent pas dans le cadre du précédent alinéa.

Des emprunts nationaux et toutes autres obligations grevant le Trésor public en dehors de celles prévues au budget ne peuvent être contractés qu'avec le consentement de la Diète impériale.

Art. 63 Les impôts actuels seront, tant qu'ils n'auront pas été modifiés par une loi nouvelle, perçus d'après l'ancien système.

Art. 64 Les recettes et dépenses de l'Etat doivent être consenties tous les ans, au moyen du budget, par la Diète impériale.

Toute dépense dépassant les crédits fixés dans les sections et chapitres du budget, ou non prévue dans le budget, doit être approuvée ultérieurement par la Diète impériale.

Art. 65 Le budget devra être présenté en premier lieu à la Chambre des représentants.

Art. 66 Les dépenses de la Maison impériale seront supportées chaque année par le Trésor public, dans les limites du chiffre actuellement fixé. Elles ne requerront le consentement de la Diète im-

périale que si une augmentation de ce chiffre est jugé nécessaire.

Art. 67 Les dépenses déjà fixées en vertu des pouvoirs constitutionnelles de l'Empereur et celles qui sont une conséquence de loi ou qui résultent des obligations légalement contractées par le gouvernement ne peuvent être ni rejetées ni réduites par la Diète impériale, sans le consentement du gouvernement.

Art. 68 En vue de satisfaire à des besoins spéciaux, le gouvernement peut demander à la Diète impériale de voter, pour un nombre d'années préalablement déterminé, une certaine somme à titre de fonds de dépenses continuelles.

Art. 69 Un fonds de réserve sera prévu dans le budget pour couvrir les déficits inévitables et subvenir aux besoins que le budget n'a pas prévus.

Art. 70 En cas où il survient des besoins imminents pour maintenir la sûreté publique, si la situation extérieure ou intérieure du pays ne permet pas la convocation de la Diète impériale, le gouvernement pourra prendre, par voie d'ordonnances impériales, toutes mesures financières nécessaires.

Dans ce cas le gouvernement devra soumettre sa décision à la Diète impériale dans la session suivante et demander son approbation.

Art. 71 Si la Diète impériale n'a pas voté le budget ou si le budget n'arrive pas à être mis en état, le gouvernement appliquera le budget de l'année

précédente.

Art. 72 Le compte définitif des dépenses et des recettes de l'Etat sera vérifié et arrêté par la Cour des comptes. Le gouvernement le soumettra à la Diète impériale avec le rapport de ladite Cour.

Une loi spéciale déterminera l'organisation et l'attribution de la Cour des comptes.

## CHAPITRE VII. DISPOSITIONS COMPLÉMENTAIRES

Art. 73 Quand il deviendra nécessaire, à l'avenir, de modifier les dispositions de la présente Constitution, un projet à cet effet sera, par ordre impérial, soumis à la Diète impériale.

Dans ce cas, chacune des Chambres ne pourra délibérer que si les deux tiers au moins du nombre total de ses membres sont présents, et aucune modification ne sera considérée comme adoptée, si elle n'est pas votée par les deux tiers au moins des membres présents.

Art. 74 Aucune modification du Statut fondamental de la Maison impériale n'aura besoin d'être soumise à la Diète impériale.

Aucune disposition de la présente Constitution ne pourra être modifiée par le Statut fondamental de la Maison impériale.

Art. 75 Aucun changement ne pourra être apporté à la Constitution ou au Statut fondamental de la Maison impériale, pendant la durée d'une régence.

Art. 76 Toutes dispositions légales existantes, telles que lois, ordonnances, règlements ou quelque

autre nom qu'elles portent, pour autant qu'elles ne sont pas contraires à la présente Constitution, resteront en vigueur.

Tous contrats et tous actes existants créant des obligations à la charge du gouvernement et entraînant des dépenses, rentrent dans le domaine de l'article 67.

(For this translation the author owes much to Dr. Yorodzu Oda, a member of the Imperial Academy of Japan).

## German Translation

### VORWORT

Nach japanischer Ueberzeugung ist die Wesenheit des japanischen Reiches die allervollkommenste in der Welt und niemand im Ausland wird bestreiten können, dass eine Wesenheit wie die des Japanischen Staates schlechthin einmalig in der Welt genannt werden darf. Das japanische Staatsoberhaupt, der Tennô, welcher über eine absolute und uneingeschränkte Gewalt verfügt, stützt sich auf das ganze Volk und dieses verehrt ihn als eine Gottheit in Menschenerscheinung. Gleichzeitig verehrt das Volk den Tennô wie seinen Vater und der Tennô liebt sein Volk wie sein Kind.

Wer diese Eigenart des japanischen Staates nicht erfasst, kann das japanische Leben nicht verstehen. Daher möchten wir Japaner den mit uns verbündeten Völkern, ferner Amerika aber auch den sonstigen Staaten diese unsere Staatsidee erklären. Gross-Deutschland ist mit uns seit alters durch traditionelle

Freundschaft und neuerdings durch ein formelles Abkommen verbündet. Die vorliegende deutsche Uebersetzung der japanischen Verfassung hat die Aufgabe, das Verständnis und die Achtung zwischen unseren beiden Ländern zu stärken und zu vertiefen.

Das von dem Verfasser in englischer Sprache herausgegebene Buch „Japanische Verfassung und Politik“ wurde bisher in angelsächsischen Ländern verteilt, insbesondere England und Amerika um sie auf diese Weise über den japanischen Giest zu unterrichten. In nächster Zeit möchte der Verfasser diese Schrift in deutscher Sprache nun auch dem innig befreundeten Gross-Deutschland vorlegen.

Tokyo, 10. November 1940

(Festtag des 2600. Jahres seit der Reichsgründung)

Dr. Niichiro Matsunami



## KAPITEL I. DER TENNÔ

- Art. 1 Das Gross-Reich Japan wird für ewige Zeiten ununterbrochen von dem Tennô regiert.
- Art. 2 Die Tennôwürde vererbt sich nach den Bestimmungen des Hausgesetzes der Tennô im Mannesstamme des Tennô-Hauses.
- Art. 3 Der Tennô ist heilig und unverletzlich.
- Art. 4 Der Tennô ist das Staatsoberhaupt. Ihm steht die Staatsgewalt uneingeschränkt zu; sie wird ausgeübt nach Maßgabe der Bestimmungen der Verfassung.
- Art. 5 Dem Tennô steht die Gesetzgebung unter Mitwirkung des Reichstages zu.
- Art. 6 Dem Tennô steht die Ausfertigung und Verkündung der Gesetze und die Anordnung der Ausführung derselben zu.
- Art. 7 Dem Tennô steht es zu, den Reichstag zu berufen, zu eröffnen, zu schließen und zu vertagen, sowie die Auflösung des Abgeordnetenhauses anzuordnen.
- Art. 8 Der Tennô kann bei dringendem Bedürfnis zur Aufrechterhaltung der öffentlichen Ordnung und zur Beseitigung eines öffentlichen Notstandes in Zeiten, wo der Reichstag nicht versammelt ist, Verordnungen mit Gesetzeskraft erlassen.

Solche Verordnungen des Tennô müssen dem Reichstage bei seinem nächsten Zusammentritte

vorgelegt werden. Wenn der Reichstag ihnen nicht zustimmt, so sind sie von der Regierung für künftig kraftlos zu erklären.

Art. 9 Der Tennô befiehlt den Erlaß der zur Ausführung der Gesetze, zur Aufrechterhaltung der öffentlichen Ruhe und Sicherheit, sowie zur Förderung der Wohlfahrt der Untertanen erforderlichen Verordnungen. Mittels solcher Verordnungen dürfen jedoch die Gesetze in keiner Weise geändert werden.

Art. 10 Der Tennô bestimmt die Organisation der verschiedenen Zweige der Staatsverwaltung. Er ernennt und entläßt die Beamten des Zivil- und Militärdienstes und setzt ihr Einkommen fest, sofern nicht in der Verfassung oder in anderen Gesetzen ausdrücklich Ausnahmen vorgesehen sind.

Art. 11 Der Tennô führt den Oberbefehl über Landheer und Flotte.

Art. 12 Der Tennô bestimmt Organisation und Stärke des Landheeres und der Flotte.

Art. 13 Der Tennô erklärt Krieg, schließt Frieden und geht Staatsverträge aller Art ein.

Art. 14 Der Tennô erklärt den Belagerungszustand. Die Voraussetzungen und Wirkungen desselben werden durch Gesetz bestimmt.

Art. 15 Der Tennô verleiht Adel, Rang, Orden sowie andere Auszeichnungen.

Art. 16 Der Tennô ordnet allgemeine und besondere Amnestie, Straferlaß, Strafumwandlung und

Rehabilitation an.

- Art. 17 Der Fall der Regentschaft regelt sich nach den Bestimmungen des Hausgesetzes des Tennô. Der Regent übt im Namen des Tennô die Staatsgewalt aus.

## KAPITEL II. DIE RECHTE UND PFLICHTEN DER UNTERTANEN.

- Art. 18 Die Voraussetzungen für die Eigenschaft eines japanischen Untertanen werden durch Gesetz bestimmt.
- Art. 19 Allen japanischen Untertanen stehen, sofern sie die durch Gesetz oder Verordnungen vorgeschriebenen Bedingungen erfüllen, die Zivil-, Militär- und sonstigen öffentlichen Ämter in gleicher Weise offen.
- Art. 20 Alle japanischen Untertanen sind zum Heeresdienst verpflichtet gemäß den gesetzlichen Bestimmungen.
- Art. 21 Alle japanischen Untertanen sind zur Zahlung von Steuern verpflichtet gemäß den gesetzlichen Bestimmungen.
- Art. 22 Alle japanischen Untertanen haben innerhalb der gesetzlichen Grenzen das Recht, nach ihrem Belieben ihren Wohnsitz zu nehmen.
- Art. 23 Alle japanischen Untertanen dürfen nur den gesetzlichen Bestimmungen gemäß festgenommen, in Haft gehalten, zur Untersuchung gezogen und bestraft werden.
- Art. 24 Keinem japanischen Untertanen darf das

Recht entzogen werden, die Rechtsprechung des ihm gesetzlich zustehenden Richters zu empfangen.

Art. 25 Ausser in den gesetzlich bestimmten Fällen darf die Wohnung eines japanischen Untertanen wider seinen Willen nicht betreten oder durchgesucht werden.

Art. 26 Das Briefgeheimnis eines jeden japanischen Untertanen ist unverletzlich außer in den gesetzlich bestimmten Fällen.

Art. 27 Das Eigentum eines jeden japanischen Untertanen ist unverletzlich. Enteignungen finden nur aus Gründen des öffentlichen Wohles den gesetzlichen Bestimmungen gemäß statt.

Art. 28 Japanische Untertanen haben die Freiheit des religiösen Bekenntnisses, soweit sich das mit der öffentlichen Ruhe und Sicherheit und ihren Pflichten als Untertanen verträgt.

Art. 29 Alle japanischen Untertanen haben innerhalb der gesetzlichen Grenzen die Freiheit, ihre Meinung in Wort und Schrift zu äußern, sowie Versammlungen abzuhalten und Vereine zu gründen.

Art. 30 Alle japanischen Untertanen haben das Petitionsrecht unter Beachtung der gehörigen Formen der Ehrerbietung und in Gemäßheit der hierfür erlassenen besonderen Bestimmungen.

Art. 31 Durch die in diesem Kapitel enthaltenen Bestimmungen werden die dem Tennô in Kriegzeiten oder im Falle eines nationalen Notstandes

zustehenden Gewalten nicht beschränkt.

Art. 32 Die Bestimmungen dieses Kapitels finden auf die Angehörigen des Landheeres und der Flotte insoweit Anwendung, als sie nicht im Widerspruch mit militärischen Verordnungen stehen.

### KAPITEL III. DER REICHSTAG.

Art. 33 Der Reichstag setzt sich aus zwei Häusern zusammen, dem Herrenhaus und dem Abgeordnetenhaus.

Art. 34 Das Herrenhaus besteht gemäß der Verordnung betreffend das Herrenhaus aus Angehörigen des Tennô-Hauses, mitgliedern der Adels Häuser und solehen Personen, die vom Tennô berufen werden.

Art. 35 Das Abgeordnetenhaus besteht aus Mitgliedern, die nach den Bestimmungen des Wahlgesetzes öffentlich gewählt werden.

Art. 36 Niemand kann zu gleicher Zeit Mitglied beider Häuser des Reichstages sein.

Art. 37 Jedes Gesetz bedarf der Mitwirkung des Reichstages.

Art. 38 Beide Häuser des Reichstages stimmen über die von der Regierung vorgelegten Gesetzentwürfe ab. Jedes Haus hat das Recht, Gesetze vorzuschlagen.

Art. 39 Ein Gesetzentwurf, der in einem der beiden Häuser abgelehnt ist, darf in derselben Session nicht wieder eingebracht werden.

Art. 40 Jedes Haus darf Gesetze oder sonstige Dinge

betreffende Anträge an die Regierung stellen. Wird ein solcher Antrag nicht angenommen, so darf er in derselben Session nicht wiederholt werden.

Art. 41 Der Reichstag wird jährlich einberufen.

Art. 42 Die Session des Reichstags dauert drei Monate. Falls ein Bedürfnis dazu vorliegt, kann sie durch Verordnung des Tennô verlängert werden.

Art. 43 In außerordentlichen und dringlichen Fällen kann ausser der ordentlichen Tagung eine außerordentliche Berufung des Reichstages stattfinden.

Die Dauer einer solchen außerordentlichen Tagung wird durch Verordnung des Tennô geregelt.

Art. 44 Die Eröffnung, Schließung und Verlängerung einer Session, sowie die Vertagung des Reichstages hat für beide Häuser gleichzeitig zu erfolgen.

Wird das Abgeordnetenhaus aufgelöst, so ist das Herrenhaus gleichzeitig zu vertagen.

Art. 45 Ist das Abgeordnetenhaus aufgelöst worden, so hat auf Verordnung des Tennô eine Neuwahl der Mitglieder stattzufinden. Das neue Haus ist dann innerhalb von fünf Monaten vom Tage der Auflösung ab einzuberufen.

Art. 46 In keinem Hause des Reichstages darf die Verhandlung eröffnet oder eine Abstimmung vorgenommen werden, falls nicht mehr als ein

Drittel aller Mitglieder anwesend sind. .

Art. 47 Die Abstimmung erfolgt in beiden Häusern nach absoluter Stimmenmehrheit. Bei Stimmengleichheit gibt die Stimme des Präsidenten den Ausschlag.

Art. 48 Die Sitzungen beider Häuser sind öffentlich. Jedoch können auf Verlangen der Regierung oder auf Beschluß des Hauses geheime Sitzungen stattfinden.

Art. 49 Jedes Haus hat das Recht, Denkschriften an den Tennô zu richten.

Art. 50 Beide Häuser können Petitionen von Untertanen entgegennehmen.

Art. 51 Beide Häuser können die zur Ordnung ihrer inneren Angelegenheiten erforderlichen Bestimmungen in Gemäßheit dieser Verfassung und der den Reichstag betreffenden Gesetze erlassen.

Art. 52 Die Mitglieder beider Häuser des Reichstages dürfen wegen der im Hause getaneenen Meinungsäußerungen oder wegen ihrer Abstimmung nicht außerhalb des Hauses zur Verantwortung gezogen werden. Wenn jedoch der Abgeordnete selbst seine Meinung durch öffentlichen Vortrag, Druck, Schrift oder ähnliche Weise veröffentlicht, so ist er nach den allgemeinen Gesetzen verantwortlich.

Art. 53 Kein Mitglied eines der beiden Häuser darf während der Session ohne Genehmigung des betreffenden Hauses verhaftet werden, ausgenommen bei Ergreifung auf frischer Tat oder

bei einer Straftat, die mit einem Aufstande im Inland oder mit auswärtigen Unruhen im Zusammenhange steht.

Art. 54 Die Reichsminister und Vertreter der Regierung können zu jeder Zeit in den beiden Häusern erscheinen und das Wort ergreifen.

#### KAPITEL IV. DIE REICHSMINISTER UND DER GEHEIME STAATSRAT.

Art. 55 Die Reichsminister haben dem Tennô ihren Rat zu geben und sind dafür verantwortlich.

Alle Gesetze, Verordnungen und Erlasse des Tennô, welche sich, auf Staatsangelegenheiten beziehen, bedürfen der Gegenzeichnung eines Ministers.

Art. 56 Die Mitglieder des Staatsrats haben gemäß den Bestimmungen über die Organisation des Staatsrats wichtige Staatsangelegenheiten zu beraten, soweit der Tennô darüber ihren Rat erfordert.

#### KAPITEL V. DIE RICHTERLICHE GEWALT.

Art. 57 Die richterliche Gewalt wird im Namen des Tennô durch die Gerichte in Gemäßheit der Gesetze ausgeübt.

Die Organisation der Gerichte wird durch Gesetz bestimmt.

Art. 58 Zu Richtern können nur diejenigen ernannt werden, welche die gesetzliche Befähigung besitzen.



Ein Richter darf außer infolge Verurteilung wegen einer Straftat oder im Wege disziplinarischen Bestrafung seines Amtes nicht entsetzt werden.

Die Bestimmungen über die disziplinarische Bestrafung werden durch Gesetz geregelt.

Art. 59 Die Gerichtsverhandlungen und die Verkündung der Urteile sind öffentlich. Wenn aber dadurch eine Störung der öffentlichen Ruhe oder Verletzung der Sittlichkeit zu befürchten ist, so kann die Öffentlichkeit der Verhandlung durch Gesetz oder Gerichtsbeschluß ausgeschlossen werden.

Art. 60 Alle Angelegenheiten, welche zur Zuständigkeit eines besonderen Gerichtshofes gehören, werden ausdrücklich durch Gesetz bestimmt.

Art. 61 Klagen auf Ersatz für Rechtsverletzungen, welche durch vermeintliche ungesetzliche Handlungen der Verwaltungsbehörden verursacht sind, sowie solche Klagen, welche zur Zuständigkeit besonderer durch Gesetz errichteter Verwaltungsgerichte gehören, können durch die Zivilgerichte nicht entschieden werden.

## KAPITEL VI. DIE FINANZEN.

Art. 62 Die Auflage einer neuen Steuer sowie die Abänderung der Beträge der bestehenden erfolgt durch Gesetz.

Verwaltungsgebühren oder Gebühren, welche sich als Gegenleistung darstellen, unterliegen den

Bestimmungen des vorigen Absatzes nicht. Die Aufnahme von Staatsanleihen oder die Übernahme anderer Verbindlichkeiten zu Lasten der Staatskasse bedürfen, soweit sie nicht im Staatshaushalt vorgesehen sind, der Mitwirkung des Reichstages.

Art. 63 Die gegenwärtig bestehenden Steuern werden, bis sie durch Gesetz abgeändert sind, in der bisherigen Weise forterhoben.

Art. 64 Die Ausgaben und Einnahmen des Staates bedürfen der Mitwirkung des Reichstages mittels eines jährlichen Voranschlages.

Zu allen Ausgaben, welche den Voranschlag überschreiten oder nicht darin vorgesehen sind, ist die nachträgliche Zustimmung des Reichstages einzuholen.

Art. 65 Der Staatshaushaltsetat wird dem Abgeordnetenhaus vorgelegt.

Art. 66 Die Ausgaben für das Tennô-Haus werden jährlich aus der Staatskasse zu dem dafür festgestellten Betrage gezahlt. Sie bedürfen der Mitwirkung des Reichstages nur dann, wenn eine Erhöhung derselben notwendig werden sollte.

Art. 67 Bereits bestehende Ausgaben, welche auf den nach der Verfassung dem Tennô zustehenden Rechten beruhen, oder welche durch gesetzliche Bestimmungen veranlaßt sind, ferner solche Ausgaben, deren Leistung zu den gesetzlichen Verpflichtungen der Regierung gehört, dürfen ohne Mitwirkung der Regierung durch den Reichstag

weder abgelehnt noch abgeändert werden.

Art. 68 Zu unvorhergesehenen Bedürfnissen darf die Regierung beim Reichstage die Bewilligung eines bestimmten Betrages als Fonds für fortlaufende Ausgaben auf eine vorher festgesetzte Reihe von Jahren nachsuchen.

Art. 69 Zur Deckung unvermeidlicher Fehlbeträge und zur Bestreitung im Haushaltsetat nicht vorgesehener wichtiger Bedürfnisse ist im Etat ein Reservefonds einzustellen.

Art. 70 Zur Aufrechterhaltung der Sicherheit kann die Regierung, wenn der Reichstag wegen der inneren und äußeren Lage des Landes nicht einberufen werden kann, die notwendigen finanziellen Maßregeln mittels Verordnung des Tennô treffen.

In dem im vorigen Absatz erwähnten Falls ist die Zustimmung des Reichstages in der nächsten Tagung einzuholen.

Art. 71 Wenn der Reichstag über den Staatshaushaltsetat nicht abgestimmt hat, oder wenn der Staatshaushaltsetat nicht zustande gekommen ist, so hat die Regierung den Staatshaushaltsetat des Vorjahres weiter auszuführen.

Art. 72 Die Schlußabrechnung über Ausgaben und Einnahmen des Staates unterliegt der Prüfung und Feststellung der Oberrechnungskammer. Die Regierung hat die Schlußrechnung zusammen mit den Bemerkungen der Oberrechnungskammer dem Reichstagé vorzulegen.

Die Organisation und die Befugnisse der Oberrechnungskammer werden durch Gesetz bestimmt.

## KAPITEL VII. ANHANG.

Art. 73 Wenn in Zukunft sich die Notwendigkeit herausstellen sollte, den Inhalt der gegenwärtigen Verfassungsurkunden abzuändern, so wird durch Verordnung des Tennô eine entsprechende Vorlage dem Reichstage gemacht werden.

In einem solchen Falle darf keines der beiden Häuser des Reichstages die Verhandlung eröffnen, wenn nicht mehr als zwei Drittel der gesamten Mitglieder anwesend sind. Die Annahme einer Verfassungsänderung gilt nur dann als erfolgt, wenn mehr als zwei Drittel der anwesenden Mitglieder dafür stimmen.

Art 74 Abänderungen des Hausgesetzes des Tennô bedürfen der Mitwirkung des Reichstages nicht,

Durch das Hausgesetz des Tennô kann eine Bestimmung der Verfassungsurkunde nicht abgeändert werden.

Art. 75 Die Verfassungsurkunde sowie das Hausgesetz des Tennô dürfen während der Dauer einer Regentschaft nicht abgeändert werden.

Art. 76 Alle Gesetze, Verordnungen, Erlasse oder wie sie sonst heißen mögen bleiben, sofern sie nicht gegen die gegenwärtige Verfassungsurkunde verstoßen, ferner in Kraft.

Ausgaben der Regierung, die auf gegenwärtig

bestehenden , Verträgen und Verordnungen beruhen, fallen sämtlich unter Art. 67.

(For this translation the author owes much to Mr. Seikei Kyo of the Japanese German Cultural Institute, Tokyo.)

## Appendix II

### The Imperial House Law

The Imperial Throne of Japan, enjoying the Grace of Heaven and everlasting from ages eternal in an unbroken line of succession, has been transmitted to us through successive reigns. The fundamental rules of Our Family were established once for all, at the time that Our Ancestors laid the foundations of the Empire, and are even at this day as bright as the celestial luminaries. We now desire to make the instruction of Our Ancestors more exact and express and to establish for Our posterity a House Law, by which Our House shall be founded in everlasting strength, and its dignity be forever maintained. We hereby, with the advice of Our Privy Council, give Our Sanction to the present Imperial House Law, to serve as a standard by which Our descendants shall be guided.

[His Imperial Majesty's Sign Manual]

[Privy Seal]

The 11th day of the 2nd month of the 22nd year of Meiji.

#### CHAPTER I. SUCCESSION TO THE IMPERIAL THRONE

Art. 1 The Imperial Throne of Japan shall be succeeded to by male descendants in the male line of Imperial Ancestors.

- Art. 2 The Imperial Throne shall be succeeded to by the Imperial eldest son.
- Art. 3 When there is no Imperial eldest son, the Imperial Throne shall be succeeded to by the Imperial eldest grandson. When there is neither Imperial eldest son nor any male descendant of his it shall be succeeded to by the Imperial son next in age, and so on in every successive case.
- Art. 4 In respect of the succession to the Imperial Throne by an Imperial descendant, the one who is of the whole blood shall have precedence over descendants of the half blood. The succession to the Imperial Throne by the latter shall be limited to those cases only, when there is no Imperial descendant of the whole blood.
- Art. 5 When there is no Imperial descendant, the Imperial Throne shall be succeeded to by an Imperial brother and by his descendants.
- Art. 6 When there is no such Imperial brother or descendant of his, the Imperial Throne shall be succeeded to by an Imperial uncle and by his descendants.
- Art. 7 When there is neither such Imperial uncle nor descendants of his, the Imperial Throne shall be succeeded to by the next nearest member among the rest of the Imperial Family.
- Art. 8 Among the Imperial brothers and the remoter Imperial relations, precedence shall be given, in the same degree to the descendants of the whole blood over those of the half blood, and to the

elder over the younger.

Art. 9 In case the Imperial heir is suffering from any incurable disease of mind or body, or any other weighty cause exists, the order of succession may be changed in accordance with the foregoing provisions, with the advice of the Imperial Family Council and with that of the Privy Council.

## CHAPTER II. ASCENSION AND CORONATION

Art. 10 Upon the demise of an Emperor, the Imperial heir shall ascend the Throne, and shall acquire the Divine Treasures of the Imperial Ancestors.

Art. 11 The ceremonies of Coronation shall be performed and a Grand Coronation Banquet held at Kyoto.

Art. 12 Upon an ascension to the Throne, a new era shall be inaugurated, and the name of it shall remain unchanged during the whole reign, in agreement with the established rule of the 1st year of Meiji.

## CHAPTER III. MAJORITY. INSTITUTION OF EMPRESS AND OF HEIR-APPARENT

Art. 13 The Emperor, the "Kōtaishi" and the "Kōtaison" shall attain majority at eighteen full years of age.

Art. 14 Members of the Imperial Family, other than those mentioned in the preceding Article, shall



attain majority at twenty full years of age.

Art. 15 The son of the Emperor who is Heir-apparent, shall be styled "Kōtaishi." In case there is no Kōtaishi, the Imperial grandson who is Heir-apparent, shall be styled "Kōtaison."

Art. 16 The institution of the Empress and that of the Kōtaison shall be proclaimed by an Imperial Rescript.

#### CHAPTER IV. STYLES OF ADDRESS

Art. 17 The style of address for the Emperor, the Grand Empress Dowager, the Empress Dowager and the Empress, shall be His, or Her or Your Majesty.

Art. 18 The Kōtaishi and his consort, the Kōtaison and his consort, the Imperial Princes and their consorts, the Imperial Princesses, the Princes and their consorts, and the Princesses shall be styled His, Her, Their or Your Imperial Highness or Highnesses.

#### CHAPTER V. REGENCY

Art. 19 When the Emperor is a minor, a Regency shall be instituted.

When He is prevented by some permanent cause from personally governing, a Regency shall be instituted, with the advice of the Imperial Family Council and with that of the Privy Council.

Art. 20 The Regency shall be assumed by the

Kōtaishi or the Kōtaison, being of full age of majority.

Art. 21 When there is neither Kōtaishi nor Kōtaison, or when the Kōtaishi or the Kōtaison has not yet arrived at his majority, the Regency shall be assumed in the following order:—

1. An Imperial Prince or a Prince.
2. The Empress.
3. The Empress Dowager.
4. The Grand Empress Dowager.
5. An Imperial Princesses or a Princess.

Art. 22 In case the Regency is to be assumed from among the male members of the Imperial Family, it shall be done agreeably to the order of succession to the Imperial Throne. The same shall apply to the case of female members of the Imperial Family.

Art. 23 A female member of the Imperial Family to assume the Regency, shall be exclusively one who has no consort.

Art. 24 When, on account of the minority of the nearest related member of the Imperial Family, or for some other cause, another member has to assume the Regency, the latter shall not, upon the arrival at majority of the above mentioned nearest related member, or upon the disappearance of the aforesaid cause, resign his or her post in favour of any person other than the Kōtaishi or the Kōtaison.

Art. 25 When a Regent or one who should become

such, is suffering from an incurable disease of mind or body, or when any other weighty cause exists therefor, the order of the Regency may be changed, with the advice of the Imperial Family Council and with that of the Privy Council.

#### CHAPTER VI. THE IMPERIAL GOVERNOR

- Art. 26 When the Emperor is a minor, an Imperial Governor shall be appointed to take charge of His bringing up and of His education.
- Art. 27 In case no Imperial Governor has been nominated in the will of the preceding Emperor, the Regent shall appoint one, with the advice of the Imperial Family Council and with that of the Privy Council.
- Art. 28 Neither the Regent nor any of his descendants can be appointed Imperial Governor.
- Art. 30 The Imperial Governor cannot be removed from his post by the Regent, unless upon the advice of the Imperial Family Council and upon that of the Privy Council.

#### CHAPTER VII. THE IMPERIAL FAMILY

- Art. 30 The term "Imperial Family" shall include the Grand Empress Dowager, the Empress Dowager, the Empress, the Kōtaishi and his consort, the Imperial Princesses, the Princes and their consorts, and the Princesses.
- Art. 31 From Imperial sons to Imperial great-great-grandsons, Imperial male descendants shall be

called Imperial Princes; and from Imperial daughters to Imperial great-great-grand-daughters, Imperial female descendants shall be called Imperial Princesses. From the fifth generation downwards, the male descendants shall be called Princes, the female descendants, Princesses.

Art. 32 When the Imperial Throne is succeeded to by a member of a branch line, the title of Imperial Prince or Imperial Princess shall be specially granted to the Imperial brothers and sisters, being already Princes or Princesses.

Art. 33 The births, namings, marriages and deaths occurring in the Imperial Family shall be announced by the Minister of the Imperial Household.

Art. 34 Genealogical and other records relating to the matters mentioned in the preceding Article shall be kept in the Imperial archives.

Art. 35 The members of the Imperial Family shall be under the control of the Emperor.

Art. 36 When a Regency is instituted, the Regent shall exercise the power of control referred to in the preceding Article.

Art. 37 When a member, male or female, of the Imperial Family is a minor and has been bereft of his or her father, the officials of the Imperial Court shall be ordered to take charge of his or her bringing up and education. Under certain circumstances, the Emperor either approves the guardian chosen by his or her Parent, or nomi-

nates one.

Art. 38 The guardian of a member of the Imperial Family must be himself a member thereof and of age.

Art. 39 Marriages of members of the Imperial Family shall be restricted to the circle of the Family, or to certain noble families specially approved by Imperial Order.

Art. 40 Marriage of the members of the Imperial Family shall be subject to the Sanction of the Emperor.

Art. 41 The Imperial writs sanctioning the marriage of members of the Imperial Family, shall bear the countersignature of the Minister of the Imperial Household.

Art. 42 No member of the Imperial Family can adopt any one as his son.

Art. 43 When a member of the Imperial Family wishes to travel beyond the boundaries of the Empire, he shall first obtain the sanction of the Emperor.

Art. 44 A female member of the Imperial Family, who has married a subject, shall be excluded from membership of the Imperial Family. However, she may be allowed, by the special grace of the Emperor, to retain her title of Imperial Princess or of Princess as the case may be.

#### CHAPTER VIII. IMPERIAL HEREDITARY ESTATES

Art. 45 No landed or other property, that has been

appropriated as the Imperial Hereditary Estates, shall be divided up or alienated.

Art. 46 The landed and other property to be included in the Imperial Hereditary Estates, shall be settled by Imperial writ, with the advice of the Privy Council, and shall be announced by the Minister of the Imperial Household.

#### CHAPTER IX. EXPENDITURE OF THE IMPERIAL HOUSE

Art. 47 The Expenditure of the Imperial House of all kinds shall be defrayed out of the National Treasury to a certain fixed amount.

Art. 48 The estimates and audit of accounts of the expenditure of the Imperial House and all other rules of the kind, shall be regulated by the Finance Regulations of the Imperial House.

#### CHAPTER X. LITIGATION. DISCIPLINARY RULES FOR THE MEMBER OF THE IMPERIAL FAMILY

Art. 49 Litigation between members of the Imperial Family shall be adjudicated on by judicial functionaries specially designated by the Emperor to the Department of the Imperial Household, and execution issued, after Imperial Sanction thereto has been obtained.

Art. 50 Civil actions brought by private individuals against members of the Imperial Family, shall be adjudicated on by the Court of Appeal in Tokyo. Members of the Imperial Family shall, however, be represented by attorneys, and no

personal attendance in the Court shall be required of them.

Art. 51 No member of the Imperial Family can be arrested, or summoned before a Court of Law, unless the sanction of the Emperor has been first obtained thereto.

Art. 52 In case a member of the Imperial Family should have committed an act derogatory to his (or her) dignity, or if he has exhibited disloyalty to the Imperial House, he shall, by way of disciplinary punishment and by order of the Emperor, be deprived of the whole or certain part of the privileges belonging to him as a member of the Imperial Family, or shall be suspended therefrom.

Art. 53 In case a member of the Imperial Family should act in a way tending to the dissipation of his (or her) property, he shall be pronounced by the Emperor to be prohibited from administering his property, and a manager shall be appointed therefor.

Art. 54 The two foregoing Articles shall be sanctioned upon the advice of the Imperial Family Council.

#### CHAPTER XI. THE IMPERIAL FAMILY COUNCIL

Art. 55 The Imperial Family Council shall be composed of the male members of the Imperial Family, who have reached the age of majority. The Lord Keeper of the Privy Seal, the President

of the Privy Council, the Minister of the Imperial Household, the Minister of State for Justice and the President of the Court of Cassation shall be directed to take part in the deliberations of the Council.

Art. 56 The Emperor personally presides over the meetings of the Imperial Family Council, or directs one of the members of the Imperial Family to do so.

## CHAPTER XII. SUPPLEMENTARY RULES

Art. 57 Those of the present members of the Imperial Family of the fifth generation and downwards, who have already been invested with the title of Imperial Prince, shall retain the same style as heretofore.

Art. 58 The order of succession to the Imperial Throne shall in every case relate to descendants of unbroken lineage. There shall be no admission to this line of succession for any one, as a consequence of his being an adopted Imperial son, Kōyūshi or heir to a princely house.

Art. 59 The grades of rank among the Imperial Princes, Imperial Princesses, Princes and Princesses shall be abolished.

Art. 60 The family ranks of Imperial Prince and all usages conflicting with the present Law, shall be abolished.

Art. 61 The property, annual expenses and all other rules concerning the members of the Imperial



Family, shall be specially determined.

Art. 62 When in future it shall become necessary either to amend or make additions to the present Law, the matter shall be decided by the Emperor, with the advice of the Imperial Family Council, and of the Privy Council.

### Supplement to the Imperial House Law

The established Law of the Imperial House of the Empire of Japan, enjoying the Grace of Heaven, expounds and is in no way at variance with the Grand Precepts of Our Imperial Ancestors. We deem it expedient, however, in view of the advance of civilization, which shall run parallel with the progressive tendencies of the world, to ensure great perfection for the law by extending and amplifying its provisions, and being desirous of having the best plan to secure the eternal stability of the great foundation laid by Our Imperial Ancestors, and of making clear the status of members of the Imperial Family, in accordance with the Constitution, We give, hereby, with the advice of Our Imperial Family Council and with that of Our Privy Council, Our sanction to the present Supplement to the Imperial House Law, whereby Our descendants and Our subjects shall never fail to be guided.

(Sign Manual)

February 11, Meiji 40.

Art. 1 A Prince may be granted a family name and be caused to join the order of the nobility by Imperial Order or through a petition.

Art. 2 A Prince may become, on obtaining the sanction of the Emperor, the successor to the headship of a noble family, or be adopted into a noble

family, with the object of succeeding to its headship.

Art. 3 The wife and direct descendants of a prince, who has, in accordance with the two preceding Articles, become a subject, and the wives of such descendants, enter such a subject's family. This rule does not apply to females married to other members of the Imperial Family and the direct descendants of such females.

Art. 4 A member of the Imperial Family, who has been deprived of its privileges may, by Imperial order, be caused to descend to the status of a subject.

Art. 5 The cases provided for in Articles 1, 2 and 4, shall be subject to the advice of the Imperial Family Council and that of the Privy Council.

Art. 6 A member of the Imperial Family who has become a subject cannot be restored to the Imperial Family.

Art. 7 Regulations relating to the personal status and other rights and duties of members of the Imperial Family, shall be specially determined, in addition to those prescribed in the present law.

The regulations referred to in the preceding clause apply when a member of the Imperial Family and a private individual are parties to a matter, concerning which different rules are provided to apply to such parties respectively.

Art. 8 Provisions in Laws and Ordinances, which are set down as applicable to members of the

Imperial Family, shall be applicable only when there are no special provisions in the present Law or in Regulations that may be issued in conformity with the present Law.

### Supplement to the Imperial House Law

We deem that it was the great policy of Our Imperial Father to expand the Grand Precepts bequeathed by Our Imperial Ancestors, and enact the best that the times require, thereby to keep abreast of the progressive development of the country, and this is the same policy which We uphold and pursue. We having now become cognizant of the advisability of extending and amplifying the established Law of the Imperial House, give, with the advice of Our Imperial Family Council and with that of Our Privy Council, Our sanction to the present Supplement to the Imperial House Law, which We hereby order to be promulgated.

A female member of the Imperial Family may marry a Prince of the principal House or of the branch House of the Yi Family.

## **Appendix III**

### **Law of the Houses**

#### **CHAPTER I. CONVOCAATION, ORGANIZATION AND OPENING OF THE IMPERIAL DIET**

**Art. 1** An Imperial Proclamation for the convocation of the Imperial Diet, fixing the date of its assembly, shall be issued at least forty days beforehand.

**Art. 2** The Members shall assemble in the Halls of their respective Houses, upon the day specified in the Imperial Proclamation of convocation.

**Art. 3** The President and Vice-President of the House of Representatives shall both be nominated by the Emperor, from among three candidates respectively elected by the Houses for each of those offices.

Until the nomination of the President and Vice President, the functions of President shall be discharged by the Chief Secretary.

**Art. 4** Each House shall divide the whole number of its Members into several Sections by lot, and in each Section a Chief shall be elected by and from among the Members belonging thereto.

**Art. 5** Upon the organization of both Houses, the day for the opening of the Imperial Diet shall be fixed by Imperial Order, and the ceremony of opening shall be celebrated by the assembly

of the Members of both Houses in the House of Peers.

Art. 6 On the occasion referred to in the preceding Article, the functions of President shall be exercised by the President of the House of Peers.

## CHAPTER II. PRESIDENT, SECRETARIES AND EXPENSES

Art. 7 There shall be in each House a President and a Vice-President.

Art. 8 The term of office of the President and of the Vice-President of the House of Representatives, shall be the same as that of the membership thereof.

Art. 9 When the office of President or of Vice-President of the House of Representatives, has become vacant by the resignation of the occupant thereof or for any other reason, the term of office of the successor shall be in correspondence with that of his predecessor.

Art. 10 The President of each House shall maintain order therein, regulate the debates and represent the House outside thereof.

Art. 11 The President of each House shall continue to assume the direction of the business of the House, during the interval that the Diet is not in session.

Art. 12 The President shall be entitled to attend and take part in the debates of both the Standing and Special Committees, but he shall have no vote

therein.

Art. 13 In each House, in the event of the disability of the President, he shall be represented in his functions by the Vice-President.

Art. 14 In each House, in the event of the disability of both the President and of the Vice-President at the same time, a temporary President shall be elected to exercise the functions of President.

Art. 15 The President and the Vice-President of each House, shall, upon the expiration of their term of office, continue to exercise their functions, until their successors have been nominated by the Emperor.

Art. 16 In each House there shall be appointed a Chief Secretary and an indefinite number of Secretaries.

The Chief Secretary shall be of the *Chokunin* rank and the Secretaries, of the *Sonin* rank.

Art. 17 The Chief Secretary shall, under the direction of the President, supervise the business of the Secretaries and append his signature to official documents.

The Secretaries shall compile the records of debates, make drafts of other documents and manage business generally.

Such requisite functionaries, other than Secretaries, as are of the *Hannin* rank or below shall be appointed by the Chief Secretary (amended by Law No. 40, 1916).

Art. 18 The expenses of both Houses shall be de-



frayed out of the National Treasury.

CHAPTER III. ANNUAL ALLOWANCES TO THE  
PRESIDENT, VICE-PRESIDENT AND MEMBERS

Art. 19 The Presidents of the respective Houses shall receive each an annual allowance of seven thousand five hundred *yen* and the Vice-Presidents, one of four thousand five hundred *yen* each; while such Members of the House of Peers as have been elected thereto, and such as have been nominated thereto by the Emperor, and the Members of the House of Representatives, shall each receive an annual allowance of three thousand *yen*. They shall also receive travelling expenses in accordance with regulations to be specially provided. Members, however, who do not comply with the summons of convocation, shall receive no annual allowance (as amended by Law No. 100, 1899, and Law No. 8, 1920).

The Presidents, Vice-Presidents and Members may decline their respective annual allowances (as amended by Law No. 100, 1899).

Members, who are in the service of the Government, shall receive no such annual allowances.

In the case mentioned in Article 25, the Members concerned shall receive, in addition to the annual allowance mentioned in the first clause of the present Article, an allowance of not more than five *yen* per diem, in accordance with schedules determined by the respective Houses.

**Art. 19 b** The Presidents, Vice-Presidents and Members of the respective Houses may travel on State-owned Railways free of charge in accordance with regulations to be specially provided (as amended by Law No. 32, 1925).

#### CHAPTER IV. COMMITTEES

**Art. 20** Committees shall be of three kinds, a Committee of the Whole House, and Standing and Special Committees.

The Committee of the Whole House is composed of the whole number of the Members of the House.

The Standing Committee shall be divided into several branches according to the requirements of business; and in order to engage in the examination of matters falling within its province, the several Sections shall, from among the Members of the House, respectively elect an equal number of members to the Standing Committee-ship. The term of Standing Committee-ship shall last during a single session only.

The Special Committees shall be chosen by the House and specially entrusted with the examination of specific matters.

**Art. 21** The Chairman of the Committee of the Whole House shall be elected for each session at the beginning of the same.

The Chairmen of both the Standing and Special Committees shall be respectively elected

at the meetings of the Committees, by and from among the members thereof.

Art. 22 No debate can be opened nor can any resolution be passed by the Committee of the Whole House, unless more than one-third of the entire number of the Members of the House are present, nor by either the Standing or Special Committees unless more than one half of the members of the same are present.

Art. 23 No stranger, other than Members of the House, shall be admitted to the meetings of either the Standing or Special Committees. Members may also be excluded from such meetings by resolution of the respective Committees.

Art. 24 The Chairman of each Committee shall report to the House concerning the proceedings and results of the meetings of the Committee over which he presides.

Art. 25 Each House may, at the request or with the concurrence of the Government, cause a Committee to continue the examination of Bills during the interval when the Diet is not sitting.

## CHAPTER V. SITTINGS

Art. 26 The President of each House shall determine the orders of the day and report the same to the House over which he presides.

In the orders of the day, Bills brought in by the Government shall have precedence, except when the concurrence of the Government has

been obtained to the contrary, in cases of urgent necessity for debate.

**Art. 27** A project of law shall be voted upon, after it has passed through three readings. But the process of three readings may be omitted, if such a course is demanded by the Government or by not less than ten Members, and agreed to by a majority consisting of not less than two-thirds of the Members present in the House.

**Art. 28** Bills brought in by the Government shall never be voted upon, without having been first submitted to the examination of a Committee. But it may happen otherwise, if so demanded by the Government, in cases of urgent necessity.

**Art. 29** When a Member moves to introduce a Bill or to make an amendment to a Bill, such motion shall not be made the subject of debate, unless it is supported by not less than twenty Members.

**Art. 30** The Government shall be at liberty at any time to either amend or withdraw any Bill which it has already brought in.

**Art. 31** All Bills shall, through the medium of a Minister of State, be presented to the Emperor by the President of that House, in which the Bill has been last voted upon.

When, however, a Bill originating in either one of the Houses has been rejected by the other, the rule set forth in the second clause of Article 54 shall be followed.

**Art. 32** Bills which, after having been passed by

both Houses of the Diet and presented to the Emperor, receive His Sanction, shall be promulgated as law before the next session of the Diet.

#### CHAPTER VI. PROROGATION AND CLOSING

Art. 33 The Government may at any time order the prorogation of either House for a period of not more than fifteen days.

When either House again meets after the termination of the prorogation, the debates of the last meeting shall be continued.

Art. 34 In case the House of Peers is prorogued on account of the dissolution of the House of Representatives, the rule set forth in the second clause of the preceding Article shall not apply.

Art. 35 Bills, representations and petitions that have not been voted upon up to the time of the closing of any session of the Imperial Diet, shall not be continued at the next session. This does not, however, apply to the case mentioned in Article 25.

Art. 36 The closing of a session of the Diet shall be effected at a joint meeting of both Houses, in accordance with Imperial Order.

#### CHAPTER VII. SECRET SITTINGS

Art. 37 In the following cases, the sittings of either House may be held with closed doors:—

1. Upon motion made either by the President or by not less than ten Members and agreed to

by the House.

2. Upon the demand of the Government.

Art. 38 When a motion to go into secret assembly is made either by the President or by not less than ten Members, the President shall cause all strangers to withdraw from the House, and shall then proceed, without debate, to take a vote upon the motion.

Art. 39 The proceedings at a secret assembly shall not be made public.

#### CHAPTER VIII. THE PASSING OF THE BUDGET

Art. 40 When the Budget is brought into the House of Representatives by the Government, the Committee on the Budget shall finish the examination of the same within twenty-one days from the day on which it received it, and report thereon to the House (as amended by Law No. 49, 1906).

When the Budget is transferred to the House of Peers, the Committee on the Budget shall finish the examination of the same within twenty-one days from the day on which it received it, and report thereon to the House,

The respective Houses may, in case of unavoidable necessity, prolong by vote the above-mentioned respective periods of examination, provided that such respective periods of prolongation shall not each exceed five days in all (as amended by Law No. 53, 1927).

Art. 41 No motion for an amendment to the Budget

can be made the subject of debate at a sitting of the House, unless it is supported by not less than thirty Members.

CHAPTER IX. MINISTERS OF STATE AND  
DELEGATES OF THE GOVERNMENT

- Art. 42 The Ministers of State and the Delegates of the Government shall be allowed at any time to speak. But the speech of no Member shall be interrupted in order that they may do so.
- Art. 43 When a Bill has been referred in either House to a Committee, the Ministers of State and the Delegates of the Government may attend the meetings of the Committee and there express their opinions.
- Art. 44 A Committee assembled may, through its President, demand explanations from the Delegates of the Government.
- Art. 45 The Ministers of State and the Delegates of the Government, except such of them as are Members of the House, shall have no vote in the House.
- Art. 46 When a meeting of either the Standing or of a Special Committee is to be held, the Chairman thereof shall on each occasion report the fact to the Ministers of State and to the Delegates of the Government concerned in the matter to be considered.
- Art. 47 The orders of the day and the notices relating to debates shall, simultaneously with the

distribution thereof among the Members, be transmitted to the Ministers of State and to the Delegates of the Government.

## CHAPTER X. QUESTIONS

Art. 48 When a Member in either House desires to put a question to the Government, he shall be required to obtain the support of not less than thirty Members.

In putting such question, the Member proposing it shall draw up a concise memorandum and present it to the President, after he shall have signed it conjointly with the supporters.

Art. 49 The President shall transmit the memorandum on questions to the Government. A Minister of State shall then either immediately answer the questions, or fix a date for making such answer, and in case he does not do so, he shall explicitly state his reasons therefor.

Art. 50 When an answer has been or has not been obtained from a Minister of State, any Member may move a representation concerning the affairs involved in the questions.

## CHAPTER XI. ADDRESSES AND REPRESENTATIONS

Art. 51 When either House desires to present an address to the Emperor, it shall be presented by it in writing; or the President may be directed, as the representative of the House, to seek an audience of the Emperor, and present the same



to Him.

The representations of either House to the Government shall be presented in writing.

Art. 52 No motion for such address or representation shall in either House be made the subject of debate, unless not less than thirty Members support it.

## CHAPTER XII. RELATIONS OF THE TWO HOUSES OF THE DIET TO EACH OTHER

Art. 53 With the exception of the Budget the Bills of the Government may be presented to either of the Houses first, according to the convenience of the case.

Art. 54 When a Government Bill has been passed in either House, with or without amendment, it shall then be carried into the other House. When the second House either concurs in or dissents from the decision of the first House, it shall, simultaneously with addressing the Emperor, report the fact to the first House.

In case a Bill introduced by either House is rejected by the other House, the second House shall report the fact to the first House.

Art. 55 When either House makes amendments to a Bill carried to it from the other House, the Bill as amended shall be returned to the first House. If the first House agrees to the amendments, it shall, simultaneously with addressing the Emperor, report the fact to the Second House.

If, on the other hand, the first House does not agree to such amendments, it may demand a conference of the two Houses.

When either House demands a conference, the other House can not refuse it.

Art. 56 Both Houses shall elect an equal number, not more than ten, of Managers to meet in conference. When the Bill in question has been adjusted at the conference, the adjusted Bill shall be discussed first in that House, which had either received it from the Government or had initiated it, and the Bill is then carried to the other House.

No motion for amendments can be made to a Bill that has been adjusted at a conference.

Art. 57 The Ministers of State, the Delegates of the Government and the Presidents of both Houses, are at liberty to attend a conference of the Houses and to express their opinions thereat.

Art. 58 No strangers are allowed to be present at a conference of the two Houses.

Art. 59 At a conference of the two Houses, votes shall be taken by secret ballot. In the event of a tie, the Chairman shall have the casting vote.

Art. 60 The Managers from the two Houses shall separately elect one of themselves Chairman of the conference. The Chairman thus elected shall occupy the chair at alternate meetings of the conference. The Chairmanship of the first meeting shall be settled by the drawing of lots.

Art. 61 All other regulations beyond what is provided in the present Chapter, as to any business in which both Houses are concerned, shall be determined by a conference of the two Houses.

### CHAPTER XIII. PETITIONS

Art. 62 All petitions addressed to either House by individuals shall be received through the medium of a Member.

Art. 63 Petitions shall be submitted, in either House, to the examination of the Committee on Petitions.

When the Committee on Petitions considers that a petition is not in conformity with established rules, the President shall return it through the Member, through whose medium it was originally presented.

Art. 64 The Committee on Petitions shall compile a list, in which shall be noted the essential points of each petition, and shall report once a week to the House.

When it is asked for by a special report of the Committee on Petitions or by not less than thirty Members of the House, either House may proceed to debate on the matter of the petition in question.

Art. 65 When either House passes a vote to entertain a petition, the petition shall then be sent to the Government, together with a memorial of the House thereon, and the House may, according to circumstances, demand a report thereon of

the Government.

Art. 66 Neither House can receive a petition presented by a proxy, excepting when such proxy is a party recognized by law as an artificial person.

Art. 67 Neither House can receive petitions for amending the Constitution.

Art. 68 Petitions shall be in the form and style of a prayer. No petition, that is not entitled such, or that does not conform with the proper form and style, shall be received by either House.

Art. 69 Neither House can receive a petition that contains words of disrespect towards the Imperial Family or those of insult to the Government or the House.

Art. 70 Neither House can receive petitions interfering with the administration of justice or with administrative litigation.

Art. 71 Both Houses shall separately receive petitions and shall not interfere each with the other in such matters.

#### CHAPTER XIV. RELATIONS BETWEEN THE HOUSES AND THE PEOPLE, GOVERNMENT OFFICES AND LOCAL ASSEMBLIES

Art. 72 Neither House is allowed to issue notifications to the people.

Art. 73 Neither House is allowed, for the prosecution of examinations, to summon persons or to direct a Member to repair outside the precincts

of the House.

Art. 74 When either House, for the purposes of examinations asks the Government for necessary reports or documents, the Government shall comply, provided such reports or documents do not relate to any secret matter.

Art. 75 Other than with the Ministers of State and the Delegates of the Government, neither House can hold any correspondence with any Government Office or with any Local Assembly.

#### CHAPTER XV. RETIREMENT, AND OBJECTIONS TO THE QUALIFICATION OF MEMBERS

Art. 76 When a Member of the House of Representatives is appointed a Member of the House of Peers, or has received an official appointment, which by law disables him from being a Member, he shall be considered as no longer a member.

Art. 77 When a Member of the House of Representatives has lost any of the qualifications of eligibility mentioned in the Law of Election, he shall be considered as no longer a member.

Art. 78 When an objection is raised in the House of Representatives as to the qualifications of any of its Members, a Special Committee shall be appointed to examine into the matter, upon a specified day, and the resolution of the House shall be taken upon the receipt of the report of the said Committee.

Art. 79 Whenever, in a Court of Law, legal pro-

ceedings pertinent to an election suit have been commenced, the House of Representatives cannot institute enquiries regarding the same matter.

Art. 80 Until the disqualification of a Member has been proved, he shall not lose either his seat or his vote in the House. In debates relating to enquiries into his own qualifications, a Member, though at liberty to offer explanations, cannot take part in the voting thereon.

#### CHAPTER XVI. LEAVE OF ABSENCE, RESIGNATION AND SUBSTITUTIONAL ELECTIONS

Art. 81 The President of either House shall have power to grant to Members leave of absence for a period not exceeding a week. As to leave of absence for a period of more than a week, permission may be given by the House. No permission shall be given for leave of absence for an unlimited period of time.

Art. 82 No Member of either House can absent himself from the meetings of the House or of a Committee, without forwarding to the President a notice setting forth proper reasons therefor.

Art. 83 The House of Representatives shall have power to accept the resignation of a Member.

Art. 84 When, from any cause whatever, a vacancy occurs among the Members of the House of Representatives, the President shall report the fact to the Minister of State for Home Affairs, demanding a substitutional election.

## CHAPTER XVII. DISCIPLINE AND POLICE

- Art. 85 For the maintenance of discipline in either House during its session, the power of internal police shall be exercised by the President, in accordance with the present Law and such regulations as may be determined by the respective Houses.
- Art. 86 The police officials required by either House shall be provided by the Government and placed under the direction of the President.
- Art. 87 When, during a meeting of the House, any Member infringes the present Law or the rules of debate, or in any way disturbs the order of the House, the President shall either warn him, stop him, or direct him to retract his remarks. If he fails to obey the order of the President, the latter shall have power either to prohibit him from speaking during the remainder of the meeting, or to order him to leave the Hall.
- Art. 88 When the House is in a state of excitement and it is found difficult to maintain order, the President shall have power either to suspend the meeting or adjourn it for the day.
- Art. 89 If any stranger disturbs the debate, the President may order him to leave the House and in case of necessity may cause him to be handed over to the police.

When the strangers' gallery is in a state of commotion, the President may order all strangers

to leave the House.

Art. 90 If any person disturbs the order of the House, the Ministers of State, the Delegates of the Government and the Members may call the attention of the President thereto.

Art. 91 In neither House shall the utterance of expressions or the making of speeches, implying disrespect to the Imperial House, be allowed.

Art. 92 In neither House shall the use of coarse language or personalities be allowed.

Art. 93 When any member has been vilified or insulted either in the House or at a meeting of a Committee, he shall appeal to the House and demand that appropriate measures be taken. There shall be no retaliation among Members.

#### CHAPTER XVIII. DISCIPLINARY PUNISHMENTS

Art. 94 Both Houses shall have the power to impose disciplinary penalties on Members.

Art. 95 In each House there shall be instituted a Committee on Disciplinary penalties for making enquiries into cases of disciplinary penalties.

When a case for disciplinary penalty occurs, the President shall, in the first place, instruct the Committee to enquire into the matter, and shall deliver a sentence after having submitted the case to the consideration of the House.

When a case for disciplinary penalties occurs at a meeting of a Committee or in a Section, the Chairman of the Committee or the Chief of the



Section shall report the matter to the President and request measures to be taken thereon.

Art. 96 Disciplinary penalties shall be as follows:—

1. Reprimands at an open meeting of the House.
2. Expression by the offender of a proper apology at an open meeting of the House.
3. Suspension of the offender from presence in the House for a certain length of time.
4. Expulsion.

In the House of Representatives, expulsion shall be decided upon only by a majority vote consisting of the votes of more than two thirds of the Members present.

Art. 97 The House of Representatives shall have no power to deny a seat to a Member who has been expelled, in case he shall have been re-elected.

Art. 98 Any Member shall, with the support of not less than twenty Members, have the right to make a motion for the infliction of a disciplinary penalty.

A motion for a disciplinary penalty shall be made within three days from the commission of the offence.

Art. 99 When, for not complying, without substantial reasons, with the Imperial Proclamation of convocation within one week from the date specified therein, or for absence, without good reasons, from the meeting of the House or of a Committee, or for having exceeded the period of his leave of absence, a Member has received a

summons from the President and still persists in delaying his appearance without good grounds for so doing, for one week after the receipt of the said summons, he shall in the House of Peers be suspended from taking his seat, and the matter shall be submitted to the Emperor for His decision. In the House of Representatives, such a Member shall be expelled therefrom.

## **Appendix IV**

### **Imperial Ordinance concerning the House of Peers**

We, in accordance with the express provisions of the Constitution of the Empire of Japan, hereby promulgate, with the advice of Our Privy Council, the present Ordinance concerning the House of Peers: as to the date of its being carried into effect, We shall issue special orders.

[His Imperial Majesty's Sign Manual]

[Privy Seal]

**Art. 1** The House of Peers shall be composed of the following Members.

1. The members of the Imperial Family.
2. Princes and Marquises.
3. Counts, Viscounts and Barons elected thereto by the members of their respective orders.
4. Persons specially nominated by the Emperor, on account of meritorious services to the State, or of their erudition.
5. Persons elected, one Member for each Fu and Ken (prefecture), by and from among the tax payers of the highest amount of direct national taxes on land, industry or trade therein, and who have been nominated thereupon members by the Emperor.

**Art. 2** The male members of the Imperial Family

shall take their seats in the House on reaching their majority.

Art. 3 The members of the orders of Princes and Marquises shall become Members on reaching the age of twenty-five years complete.

Art. 4 The members of the orders of Counts, Viscounts and Barons, who after reaching the age of twenty-five years complete, have been elected by the members of their respective orders, shall become Members for a term of seven years. Rules for their election shall be specially determined by Imperial Ordinance.

The number of Members mentioned in the preceding clause, shall not exceed one-fifth of the entire number of the respective orders of Counts, Viscounts and Barons.

Art. 5 Any man above the age of thirty years complete, who has been nominated by the Emperor as a Member on account of meritorious services to the State, or for his erudition, shall be a life Member.

Art. 6 One Member shall be elected in each Fu and Ken from among and by the fifteen male inhabitants thereof of above the age of thirty years complete, paying therein the highest amount of direct national taxes on land, industry or trade. When the person thus elected receives his nomination from the Emperor, he shall become a Member for a term of seven years. Rules for such election shall be specially deter-

mined by Imperial Ordinance.

Art. 7 The number of Members nominated by the Emperor for meritorious services to the State or for their erudition, or from among those paying the highest amount of direct national taxes on land, industry or trade in each Fu or Ken, shall not exceed the number of the Members having the title of nobility.

Art. 8 The House of Peers shall, when consulted by the Emperor, vote upon rules concerning the privileges of the nobility.

Art. 9 The House of Peers decides upon the qualification of its Members and upon disputes concerning elections thereto. The rules for decision shall be resolved upon by the House of Peers and submitted to the Emperor for His Sanction.

Art. 10 When a Member has been sentenced to confinement, or to any severer punishment, or has been declared bankrupt, he shall be expelled by Imperial Order:

With respect to the expulsion of a Member as a disciplinary penalty in the House of Peers, the President shall report the facts to the Emperor for His decision.

Any Member that has been expelled shall be incapable of again becoming a Member, unless permission so to do is granted by the Emperor.

Art. 11 The President and Vice-President shall be nominated by the Emperor from among the Members for a term of seven years.

If an elected Member is nominated President or Vice-President, he shall serve in that capacity for the term of his membership.

Art. 12 Every matter, other than what has been provided for in the present Imperial Ordinance, shall be dealt with according to the provisions of the Law of the Houses.

Art. 13 If in future any amendment in or addition to the provisions of the present Imperial Ordinance, is to be made the matter shall be submitted to the vote of the House of Peers.

#### AMENDMENT

Art. 1 The House of Peers shall be composed of the following Members.

1. The members of the Imperial Family.
2. Princes and Marquises.
3. Counts, Viscounts and Barons elected thereto by the members of their respective orders.
4. Persons who have been specially nominated by the Emperor on account of meritorious services to the State or for their education.
5. Persons elected by and from among the members of the Imperial Academy, and afterwards nominated members by the Emperor, (Supplement of May 5, 14th Taishō; 1925).
6. Persons elected, one or two Members for Hokkaido and each Fu and Ken (prefecture), from among the payers of the highest amount of direct national taxes on land, industry or

trade therein, and who have thereupon been nominated members by the Emperor (as amended March 25, 7th Taisho, 1918; May 5, 11th Taisho, 1925).

Art. 3 Members of the orders of Princes and of Marquises shall become Members on reaching the age of thirty years complete.

• The members mentioned in the preceding clause may resign their posts, on permission so to do being granted by the Emperor (Supplement May 5, 14th Taisho, 1925).

• Those who have resigned their posts under the provisions of the preceding clause may be re-nominated by Imperial Order. (Supplement of May 5, 14th Taisho, 1925).

Art. 4 Members of the orders of Counts, Viscounts and Barons; who after reaching the age of thirty years complete, have been elected by the members of their respective orders, shall become Members for a term of seven years. Rules for their election shall be specially determined by Imperial Ordinance (as amended May 5, 14th Taisho, 1925).

The number of Members mentioned in the preceding clause shall be eighteen Counts, sixty-six Viscounts and sixty-six Barons. The number of them shall not exceed one-fifth of the entire number in each respective order (as amended March 22, 38th Meiji, 1915; April 13, 42nd Meiji, 1909; March 25, 18th Taisho, 1918; May 5, 14th

Taisho, 1925).

Art. 5 Any man above the age of thirty years complete, who has been nominated by the Emperor on account of meritorious services to the State, or for his erudition, shall be a life Member.

The number of Members mentioned in the preceding clause shall not exceed one hundred and twenty-five (Supplement of March 22, 28th Meiji, 1905).

In case the Members nominated under the first clause of the present article are prevented from performing their functions by enfeeblement of mind or body, the matter shall be decided upon by the House of Peers and submitted to the Emperor for His Sanction (Supplement of May 5, 14th Taisho, 1925).

Rules for the decision mentioned in the preceding clause shall be voted upon by the House of Peers and submitted to the Emperor for His Sanction (Supplement of May 5, 14th Taisho, 1925).

Art. 5 b Four Members shall be elected by and from among the members of the Imperial Academy of above the age of thirty years complete. When the persons thus elected receive their nomination by the Emperor, they shall be Members for a term of seven years as long as they remain members of the said academy (Supplement of May 5, 14th Taisho, 1925).

Art. 6 Members shall be elected in Hokkaido and in



each Fu and Ken from among and by the inhabitants thereof of above the age of thirty years complete, paying therein the highest amount of direct national taxes on land, industry or trade in either of the two proportions: one Member to one hundred tax payers; two Members to two hundred tax payers. Upon the person thus elected, receiving his nomination from the Emperor, he shall become Member for a term of seven years. Rules for such election shall be specially determined by Imperial ordinance (as amended, March 25th, 7th Taisho, 1918; May 5, 14th Taisho, 1925).

The number of Members mentioned in the preceding clause shall not exceed sixty-six, and the number of Members in Hokkaido and in each Fu and Ken shall be apportioned at every ordinary election (Supplement of May 5, 14th Taisho, 1925).

Art. 7 Rescinded (May 5, 14th Taisho, 1925).

Art. 10 When a Member has been sentenced to confinement, or to any severer punishment, or has been adjudicated and confirmed insolvent or been declared bankrupt, he shall be expelled by Imperial Order.

With respect to the expulsion of a Member, as a disciplinary penalty in the House of Peers, the President shall report the facts to the Emperor for his decision (May 5, 14th Taisho, 1925).

Any Member who has been expelled shall be

incapable of again becoming a Member, unless permission so to do has been granted by the Emperor.

#### APPENDED RULE

(Supplement of May 5, 14th Taisho, 1925)

Of the present Imperial Ordinance, the amended provisions of Article 4 and those of Clause 2, Article 1 and Article 6 shall come into force with the ordinary elections that will respectively take place in the 14th year of Taisho, while the remaining provisions shall come into force from the date of the next ordinary elections.

Those persons who will be actually Members in accordance with the provisions of Clause 2, Article 1, at the time when the amended provisions of Article 3 become in force, shall remain Members notwithstanding the amended provisions of Clause 1, Article 3.

Those persons who have been nominated Members by the Emperor under Clause 5, Article 1 before its present amendment and whose term is to expire in the 14th year of Taisho, shall have the same term as before the amendment, provided that, if their term is to expire before the date of the ordinary election of the Members mentioned in the provision of Clause 6, Article 1 in the present Amendment, it shall be prolonged till the day before the said date.

## Appendix V

### Prince Shotoku's Seventeen Articles (604 A.D.)

- Art. 1 Harmony is to be valued and an avoidance of wanton opposition to be honoured. All men are influenced by class-feelings, and there are few who are intelligent. Hence there are some who disobey their lords and fathers, or who maintain feuds with the neighbouring villages. But when those above are harmonious and those below are friendly, and there is concord in the discussion of business, right views of things spontaneously gain acceptance. Then what is there which cannot be accomplished?
- Art. 2 Sincerely reverence the three treasures. The three treasures, viz. Buddha, the Law and the Priesthood are the final refuge of the four generated beings, and are the supreme objects of faith in all countries. What man in what age can fail to reverence this law? Few men are utterly bad. They may be taught to follow it. But if they betake themselves not to the three treasures, wherewithal shall their crookedness be made straight?
- Art. 3 When you receive the Imperial commands fail not scrupulously to obey them. The lord is Heaven, the vassal is Earth. Heaven over-spreads, and Earth upbears. When this is so, the four seasons follow their due course, and the

powers of Nature obtain their efficiency. If the Earth attempted to overspread, Heaven would simply fall in ruins. Therefore it is that when the lord speaks the vassal listens. Consequently when you receive the Imperial commands, fail not to carry them out scrupulously. Let there be want of care in this matter, and ruin is the natural consequence.

Art. 4 The Ministers and functionaries should make decorous behaviour their leading principle, for the leading principle of the government of the people consists in decorous behaviour. If the superiors do not behave with decorum, the inferiors are disorderly; if inferiors are wanting in proper behaviour, there must necessarily be offences. Therefore it is that when lord and vassal behave with propriety, the distinctions of rank are not confused: when the people behave with propriety, the government of the Commonwealth goes on of itself.

Art. 5 Ceasing from gluttony and abandoning covetous desires, deal impartially with suits which are submitted to you. Of complaints brought by the people there are a thousand in one day. If in one day there are so many, how many will there be in a series of years? If the man who is to decide suits at law makes gain his ordinary motive, and hears causes with a view to receiving bribes, then will the suits of the rich man be like a stone flung into water, while the complaints of the

poor will resemble water cast upon a stone. Under these circumstances the poor man will not know whither to betake himself. Here too there is a deficiency in the duty of the Minister.

Art. 6 Chastise that which is evil and encourage that which is good. This was the excellent rule of antiquity. Conceal not, therefore, the good qualities of others, and fail not to correct that which is wrong when you see it. Flatterers and deceivers are a sharp weapon for the overthrow of the State, and a pointed sword for the destruction of the people. Sycophants are also fond, when they meet, of dilating to their superiors on the errors of their inferiors; to their inferiors, they censure the faults of their superiors. Men of this kind are all wanting in fidelity to their lord, and in benevolence towards the people. From such an origin great civil disturbances arise.

Art. 7 Let every man have his own charge, and let not the spheres of duty be confused. When wise men are entrusted with office, the sound of praise arises. If unprincipled men hold office, disasters and tumults are multiplied. In this world, few are born with knowledge: wisdom is the product of earnest meditation.

In all things, whether great or small, find the right man, and they will surely be well managed. On all occasions, be they urgent or the reverse, meet with a wise man, and they will of themselves

be amenable. In this way will the State be lasting and the Temples of the Earth and of Grain will be free from danger. Therefore did the wise sovereigns of antiquity seek the man to fill the office and not the office for the sake of the man.

Art. 8 Let the Ministers and functionaries attend the Court early in the morning, and retire late. The business of the State does not admit of remissness, and the whole day is hardly enough for its accomplishment. If therefore attendance at Court is late, emergencies cannot be met; if officials retire soon, the work cannot be completed.

Art. 9 Good faith is the fountainhead of right. In everything let there be good faith, for in it there surely consists the good and ill success. If the lord and the vassal observe good faith one with another, what is there which cannot be accomplished? If the lord and the vassal do not observe good faith towards one another, everything without exception ends in failure.

Art. 10 Let us cease from wrath, and refrain from angry looks. Nor let us be resentful when others differ from us. For all men have hearts, and each heart has its own leanings. Their right is our wrong and our right is their wrong. We are not unquestionable sages, nor are they unquestionably fools. Both of us are simply ordinary men. How can any one lay down a rule

by which to distinguish right from wrong? For we are all, one with another, wise and foolish, like a ring which has no end. Therefore although others give way to anger, let us on the contrary dread our own faults, and though we alone may be in the right, let us follow the multitude and act like them.

Art. 11 Give clear appreciation to merit and demerit, and deal out to each its sure reward or punishment. In these days, reward does not attend upon merit, nor punishment upon crime. Ye high functionaries who have charge of public affairs, let it be your task to make clear rewards and punishments.

Art. 12 Let not the provincial authorities or the *Kuni no Miyakko* levy exactions on the people. In a country there are not two lords; the people have not two masters. The sovereign is the master of the people, of the whole country. The officials to whom he gives charge are all his vassals. How can they, as well as the government, presume to levy taxes on the people?

Art. 13 Let all persons entrusted with offices attend equally to their functions. Owing to illness or to their being sent on missions, their work may sometimes be neglected. But whenever they become able to attend to business, let them be as accommodating as though they had had cognizance of it before, and not hinder public affairs on the score of their not having had to do with

them.

Art. 14 Ye Ministers and functionaries! Be not envious. For if we envy others, they in turn envy us. The evils of envy know no limit. If others excel us in intelligence it gives us no pleasure; if they surpass us in ability we are envious. Therefore it is not until after a lapse of five hundred years that we at last meet with a wise man and even in a thousand years we hardly obtain one sage. But if we do not find wise men and sages, wherewithal shall the country be governed?

Art. 15 To turn away from that which is private, and, to set our faces towards that which is public—this is a path of a Minister. Now if a man is influenced by resentful feelings, he will assuredly fail to act harmoniously with others. If he fails to act harmoniously with others, he will assuredly sacrifice public interest to private feelings. When resentment arises, it interferes with order, and is subversive of law. Therefore in the first clause it was said, that superiors and inferiors should agree together. The purport of that is the same as this.

Art. 16 Let the people be employed (in forced labour) at reasonable times. This is an ancient and excellent rule. Let them be employed, therefore, in the winter months when they are at leisure. But from spring to autumn, when they are engaged in agriculture or with the mulberry



trees the people should not be employed. For if they attend not to agriculture, what have they to eat? If they attend not to the mulberry trees, what will they do for clothing?

Art. 17 Decisions on important matters should not be made by one person alone. They should be discussed with many. But small matters are of less consequence. It is unnecessary to consult a number of people. It is only in the case of the discussion of mighty affairs, where there is a suspicion that they may miscarry, that one should arrange matters in concert with others, so as to arrive at the right conclusion.

## **Appendix VI**

### **Constitution of Thai (Siam)**

#### **GENERAL PROVISIONS**

**Section 1** The Kingdom of Siam is one and indivisible. The Siamese people of whatever race or religion are all equally entitled to the protection of the Constitution.

**Section 2** The sovereign power emanates from the Siamese nation. The King, who is the Head of the nation, exercises it in conformity with the provisions of this Constitution.

#### **CHAPTER I. THE KING**

**Section 3** The person of the King is sacred and inviolable.

**Section 4** The King shall profess the Buddhist Faith and is the Upholder of Religion.

**Section 5** The King is the Head of the Siamese Forces.

**Section 6** The King exercises the legislative power by and with the advice and consent of the Assembly of the People's Representatives.

**Section 7** The King exercises the executive power through the Council of Ministers.

**Section 8** The King exercises the judicial power through the Courts duly established by law.

**Section 9** Subject to the approval of the Assembly of the People's Representatives, succession to the

Throne shall be in accordance with the Law on Succession B.E. 2467.

Section 10 If the King intends to be absent from the Kingdom or for any reason whatever should be unable to carry out His functions, He shall appoint a Regent or a Council of Regency with the approval of the Assembly of the People's Representatives. If the King does not make such appointment or is unable to do so, the Assembly shall itself proceed to make the appointment. Pending the appointment of a Regent or a Council of Regency by the Assembly the Council of Ministers shall temporarily perform the duties of Regent.

Section 11 Members of the Royal Family from the rank of Mom Chao upwards, whether so born or created, are above politics.

## CHAPTER II. RIGHTS AND DUTIES OF THE SIAMESE

Section 12 Subject to the provisions of this Constitution, all persons are equal before the law. Titles acquired by birth, by bestowal or in any other way do not confer any privilege whatever.

Section 13 Every person is entirely free to profess any religion or creed and to exercise the forms of worship in accordance with his own belief, provided that it is not contrary to the duties of a national or to public order or public morals.

Section 14 Subject to the provisions of the law, every person enjoys full liberty of person, abode,

property, speech, writing, publication, education, public meeting, association and vocation.

Section 15 It is the duty of every person to respect the law, to defend the country and to assist the Government by the payment of taxes and in other ways, under the conditions and in the manner prescribed by law.

### CHAPTER III. ASSEMBLY OF THE PEOPLE'S REPRESENTATIVES

Section 16 The Assembly of the People's Representatives shall be composed of members who are elected by the people.

Section 17 The qualifications of the electors and of candidates for election, the mode of election and the number of members of the Assembly of the People's Representatives shall be in accordance with the provisions of the electoral law.

Section 18 Members of the Assembly of the People's Representatives shall be elected for a period of four years. If a vacancy occurs among the members otherwise than by the expiration of the prescribed period, a new member shall be elected to fill the vacancy; but he shall hold office only for the remainder of the unexpired period.

Section 19 Members of the Assembly of the People's Representatives must, before assumption of office, make solemn declaration in the Assembly that they will uphold and observe this Constitution.

Section 20 Members of the Assembly of the People's

Representatives are representatives of the whole Siamese nation and not merely representatives of those who elected them.

They must perform their duties in accordance with the honest dictates of their conscience and are not bound by any imperative mandate.

Section 21 Membership of the Assembly of the People's Representatives comes to an end:—

- (1) by expiration of the prescribed period or by dissolution of the Assembly,
- (2) by death,
- (3) by resignation,
- (4) by loss of any of the qualifications of the candidate for election in accordance with the electoral law,
- (5) by dismissal from office pronounced by the Assembly whenever the Assembly considers that the conduct of the member concerned is likely to be detrimental to its interests. Such a resolution requires a majority of two-thirds of the members present.

Section 22 The King will appoint such members of the Assembly of the People's Representatives as may be selected by the Assembly to be the President and Vice-Presidents of the Assembly.

Section 23 It shall be the duty of the President of the Assembly of the People's Representatives to conduct the proceedings of the Assembly in accordance with the rules of procedure. A Vice-president shall act in the place of the President

when the President is absent or unable to perform his duty.

Section 24 If both the President and the Vice-President or Vice-Presidents are absent from any meeting of the Assembly, the members present shall elect from among themselves a temporary chairman to preside over that meeting.

Section 25 At every meeting of the Assembly of the People's Representatives, the presence of one-third of the total number of its members shall constitute a quorum.

Section 26 Unless otherwise specially provided by this Constitution, all questions in the Assembly of the People's Representatives shall be decided by a majority vote.

Section 27 In the meetings of the Assembly of the People's Representatives words uttered by members whether in making a statement of fact or in expressing an opinion or in explaining a vote are absolutely privileged. No legal proceedings whatever can be taken against them.

The privilege extends to the printing and publication of the minutes of the meeting by authority of the Assembly and also to statements of fact and opinion expressed in the Assembly by persons invited by the Assembly to do so.

Section 28 The Assembly of the People's Representatives shall hold one or more regular sessions in each year in accordance with the decision that will be taken. The first regular session must be

called not later than 90 days after the decision. The dates of the regular sessions shall be fixed by the Assembly.

Section 29 A regular session of the Assembly of the People's Representatives shall last 30 days, but its duration may be prolonged by the King.

The King may, during the period of 90 days, prorogue the session.

Section 30 The King convokes the Assembly of the People's Representatives for its regular session, and opens and closes it.

The King may open the session in person or may command the Heir to the Throne, if he is of age, or the President of the Council of Ministers to perform the ceremony in his place.

Section 31 Whenever the interests of the State so require, the King may call an extraordinary session of the Assembly.

Section 32 Members of the Assembly of the People's Representatives of not less than one-third of their total number may, whenever they deem it necessary in the interest of the State, submit a joint application to the President of the Assembly requesting him to petition the King to summon an extraordinary meeting of the Assembly. In such case the President of the Assembly shall so petition the King and countersign the Royal Command.

Section 33 During the session of the Assembly of the People's Representatives, when a criminal action

is brought against any one of its members, the Court must obtain the prior permission of the Assembly before the case can be tried. The proceedings of the Court must not interfere with the liberty of the Member concerned to attend the meetings of the Assembly.

However, the proceedings of the Court prior to the plea of membership remain valid.

**Section 34** During the session of the Assembly, none of its members shall be arrested or summoned for detention except when arrested in the act of committing an offence, in which case the matter must be reported without delay to the President of the Assembly. The President may order the release of the prisoner.

**Section 35** It is the King's prerogative to dissolve the Assembly of the People's Representatives in order that new elections may be held.

The Decree for such dissolution shall provide for the new election to be held within a period of 90 days.

**Section 36** All laws can be promulgated only by and with the advice and consent of the Assembly of the People's Representatives.

**Section 37** The annual budget of the State must be made in the form of a law. If the budget is not passed in time for the new year, the Government may carry on temporarily with the budget of the preceding year.

**Section 38** After a Bill has been passed by the



Assembly of the People's Representatives, the President of the Council of Ministers shall submit it to the King, by the President of the Council of Ministers and publication in the Government Gazette.

Section 39 If the King disapproves of the Bill, the Assembly shall, after the lapse of one month from the date when the Bill was submitted to the King by the President of the Council of Ministers and irrespective of whether or not the Bill was returned to the Assembly within the stated period, reconsider the Bill, with secret voting taken by roll call. If the Assembly reaffirms the Bill, it shall once more be submitted to the King. If the King fails to append His signature to it within 15 days it may forthwith be promulgated and published as law.

Section 40 Every member of the Assembly of the People's Representatives has the power of control over the affairs of the State.

At a meeting of the Assembly every member of the Assembly has the right to interpellate the Ministers on all matters within the scope of their duties. But the Ministers may refuse to reply if they are of opinion that the matter should not yet be made public, for reasons of public safety or of vital interest to the State.

Section 41 The Assembly of the People's Representatives reserves the right to pass a vote of non-confidence in the Ministers either individually or

collectively,

Such a motion shall not, however, be put to the vote on the day on which it is discussed.

**Section 42** The meetings of the Assembly of the People's Representatives are public, in accordance with the Rules of Procedure of the Assembly. But secret meetings may be held upon the request of the Council of Ministers or of not less than 15 members.

**Section 43** The Assembly of the People's Representatives has power to appoint an ordinary commission composed of its members or a special commission composed of members and non-members of the Assembly for the purpose of dealing with or enquiring into any matter within the scope of the work of the Assembly and then submitting their report to the Assembly. Such commissions are empowered to summon any person to explain or give his opinion on the matter being dealt with or enquired into.

The privilege of the Assembly as provided in Section 27 of this Constitution also extends to the persons who perform their duty in conformity with the provisions of this Section.

**Section 44** At the meetings of a commission referred to in Section 43, the presence of one-half of the total number of its members shall constitute a quorum.

**Section 45** The Assembly of the People's Representatives is empowered to establish rules concerning

the conduct of its meetings and deliberations in pursuance of the provisions of this Constitution.

#### CHAPTER IV. THE COUNCIL OF MINISTERS

Section 46 The King appoints a Council of Ministers, composed of one President and from 14 to 24 other Ministers.

The appointment of the President of the Council of Ministers shall be countersigned by the President of the Assembly.

The Council of Ministers is charged with the duty of conducting the government of the State.

Section 47 The president and 14 other State Councillors shall be selected from among the members of the Assembly of the People's Representatives. The remaining Ministers may be selected from among persons who possess special knowledge or experience. These persons need not be members of the Assembly, but they must be persons who are capable of holding a political position.

Section 48 Ministers who are not members of the Assembly of the People's Representatives may attend and express their opinion in the meetings of the Assembly, but they have no right to vote.

The privileges referred to in Section 27 shall apply *mutatis mutandis*.

Section 49 The appointment of a member of the Assembly of the People's Representatives as Minister does not oblige him to resign his membership of the Assembly.

**Section 50** The Council of Ministers must possess the confidence of the Assembly of the People's Representatives in conducting the government of the State.

A Minister who has been appointed to take charge of any Department of State shall be constitutionally responsible to the Assembly of the People's Representatives for acts performed in the exercise of his functions. But every Minister, whether or not he has been appointed to take charge of any Department of State, shall be collectively responsible for the general policy of the Government.

**Section 51** The Council of Ministers shall resign as a body when the Assembly of the People's Representatives has passed a vote of want of confidence in the Council or when the Assembly which gave it a vote of confidence has ceased to exist. In both cases, the retiring Council of Ministers shall remain in office till the newly appointed Council assumes its functions.

Apart from this, membership of the Council of Ministers comes to an end individually :

- (1) by death,
- (2) by resignation,
- (3) by loss of the qualifications prescribed in Section 21 (4),
- (4) by a vote of want of confidence passed by the Assembly.

**Section 52** In case of emergency when a meeting of

the Assembly of the People's Representatives cannot be summoned in time, the King may issue emergency decrees which shall provisionally have the force of law.

Such decrees shall be submitted to the Assembly at its next meeting for its approval. If the Assembly gives its approval, they shall forthwith become laws, otherwise they shall cease to have force. But such a decision of the Assembly shall not affect the validity of any act done during the period the emergency decrees were in force.

The approval or disapproval of the Assembly shall be signified in the form of a law.

Section 53 The King proclaims Martial law under the conditions and in the manner prescribed by the Martial Law Act.

Section 54 It is the King's prerogative to declare war, make peace and conclude treaties with foreign States.

A declaration of war will only be made when it is not contrary to the provisions of the Covenant of the League of Nations.

Treaties which provide for a change in the territories of Siam or which require the promulgation of a law to enforce their provisions must receive the approval of the Assembly of the People's Representatives.

Section 55 It is the King's prerogative to grant pardon.

**Section 56** The King may issue Royal Decrees not conflicting with the law.

**Section 57**, Subject to the provisions of Sections 32 and 46, every law, Royal Rescript and Royal Command relating to the affairs of the State shall be countersigned by a member of the Council of Ministers who shall thereby assume the responsibility.

#### CHAPTER V. THE COURTS

**Section 58** The judicial power shall be exercised by the Courts according to law in the name of the King.

**Section 59** All courts can be established only by means of a law.

**Section 60** Judges are independent in holding trials and giving judgment according to law.

#### CHAPTER VI. FINAL PROVISIONS

**Section 61** The provisions of any law which are contrary to or in conflict with this Constitution are null and void.

**Section 62** Absolute right to interpret this Constitution is vested in the Assembly of the People's Representatives.

**Section 63** This Constitution can be amended only under the following conditions:—

- (1) A motion for an amendment can only be made either by the Council of Ministers or by members of the Assembly of the People's Representatives collectively of not less than

$\frac{1}{4}$  of their total number.

- (2) When a motion has once been passed, it should be left in abeyance for a period of one month. On the expiration of this period the motion shall again be submitted to the Assembly.
- (3) Voting shall be by roll call, and the number of votes in favour of the amendment must not be less than  $\frac{3}{4}$  of the total number of members of the Assembly.

When the voting on both occasions has been made in the manner above described, the matter shall be proceeded with in conformity with Sections 38 and 39.

## CHAPTER VII. THE OPERATION OF THE CONSTITUTION AND TRANSITORY PROVISIONS

Section 64 Subject to the provisions of this Chapter, the constitution shall come into force from the date of its publication.

Section 65 Until the time when the people who are entitled to vote for the candidates of the Assembly of the People's Representatives under this Constitution shall have passed their examination in primary education in excess of half of their total number, and at the latest not more than ten years from the date on which the Provisional Constitution of Siam B.E. 2475 came into force the Assembly of the People's Representatives shall be composed of two categories of members

of equal number :—

- (1) Members of the 1st category are those who are elected by the people under the conditions laid down in Sections 16 and 17.
- (2) Members of the 2nd category are those who are appointed by the King in accordance with the law on the Election of Members of the Assembly of the People's Representatives during the period when the Transitory Provisions of the Constitution of Siam B.E. 2475 are in force.

Section 66 If during the period referred to in Section 65 there should be a dissolution of the Assembly of the People's Representatives in accordance with the provision of Section 35, such dissolution shall apply only to the members of the 1st category.

Section 67 Subject to the provisions of Section 21 (2), (3), (4), (5), members of the 2nd category shall retain their seats throughout the period prescribed in Section 65, but they may not meet as an Assembly when the latter is dissolved under Section 35.

Section 68 From the date when this Constitution comes into force till the time when members as provided in Section 65 shall have assumed their functions, the Assembly of the People's Representatives shall still be composed of the seventy members who were nominated under the Provisional Constitution of Siam B.E. 2475.



## Appendix VII

### Organic Law of Manchukuo

(The Constitution of the Imperial Manchukuo is not yet framed)

#### CHAPTER I. THE CHIEF EXECUTIVE

- Art. 1 The Chief Executive shall rule Manchukuo, the State of Manchuria.
- Art. 2 The Chief Executive shall represent Manchukuo.
- Art. 3 The Chief Executive shall be responsible to the entire people.
- Art. 4 The Chief Executive shall be nominated by the entire people.
- Art. 5 The Chief Executive shall exercise the legislative power with the approval of the Legislative Council.
- Art. 6 The Chief Executive shall supervise and control the State Council and exercise the administrative power.
- Art. 7 The Chief Executive shall cause the courts of justice to exercise the judicial power in accordance with law.
- Art. 8 The Chief Executive shall issue orders for the maintenance and promotion of the peace, security and happiness of the people and for the execution of the laws. He shall, however, have no power to alter laws by such orders.

Art. 9 In case it shall be impossible to convene the Legislative Council, either to maintain public peace and order or, to avert emergency calamities, the Chief Executive shall be empowered to issue, with the approval of the Privy Council, emergency ordinances which shall have the force of law. Such emergency ordinances must, however, be reported at the following session of the Legislative Council.

Art. 10 The Chief Executive shall determine the organization of the administration, appoint and dismiss government officials and fix their salaries, except in the case of those which are otherwise especially provided for by the present Organic Law or other laws.

Art. 11 The Chief Executive shall have the power to declare war and peace and to conclude treaties.

Art. 12 The Chief Executive shall have the supreme command of the military, naval and air forces.

Art. 13 The Chief Executive shall have the power to grant amnesties, pardons, commutations of punishment and rehabilitations of rights.

## CHAPTER II. THE PRIVY COUNCIL

Art. 14 The Privy Council shall be composed of Privy Councillors.

Art. 15 The Privy Council shall, when consulted by the Chief Executive, submit its opinion relative to the following matters:

(1) Laws.

(2) Ordinances.

(3) Budgets.

(4) Treaties and agreements negotiated with foreign nations and declarations to foreign countries issued in the name of the Chief Executive.

(5) Principal appointments and dismissals of government officials.

(6) Other important matters relating to the affairs of the State.

Art. 16 The Privy Council may present its views to the Chief Executive on important matters relating to the affairs of the State.

### CHAPTER III. THE LEGISLATIVE COUNCIL.

Art. 17 The organization of the Legislative Council shall be determined by a separate law.

Art. 18 All legislative and budgetary bills shall require the approval of the Legislative Council.

Art. 19 The Legislative Council may present proposals concerning important matters of the State to the State Council.

Art. 20 The Legislative Council may receive petitions presented by the people.

Art. 21 The Legislative Council shall be convoked annually by the Chief Executive. The duration of the ordinary session shall be one month; it may, however, be extended by the Chief Executive if he shall deem it necessary.

Art. 22 One-third or more of the total members of

- the Legislative Council shall constitute a quorum.
- Art. 23 The proceedings of a session of the Legislative Council shall be determined by a majority of the members present. In case of a tie, the Chairman shall have the casting vote.
- Art. 24 The sitting of the Legislative Council shall be open to the public. Closed sittings may, however, be called on demand of the State Council or of a resolution of the Legislative Council.
- Art. 25 Legislative and budgetary bills passed by the Legislative Council shall be approved, promulgated and executed by the Chief Executive. In the event of legislative and budgetary bills being rejected by the Legislative Council, the Chief Executive shall request the Council for reconsideration, presenting his reasons therefor. If again rejected, the Privy Council shall be consulted for a decision on the matter.
- Art. 26 The members of the Legislative Council shall not be held responsible outside the Council for their discussions and decisions within the Council.

#### CHAPTER IV. THE STATE COUNCIL

- Art. 27 The State Council shall take charge of all administrative affairs, by order of the Chief Executive.
- Art. 28 The State Council shall be divided into the Departments of Civil Affairs, Foreign Affairs, Defence, Finance, Industry, Communications, Justice and Education.

Art. 29 The State Council shall include a Prime Minister and a minister for each of the Departments.

Art. 30 The Prime Minister and the Ministers of the Departments may attend the sessions of the Legislative Council at any time and may have a voice in its deliberations but shall have no vote.

Art. 31 The Prime Minister shall countersign all laws, ordinances, and messages relating to the affairs of the State.

(As revised October 5, First Year of Tatung, 1932:—

All laws, ordinances, military orders and messages relating to State affairs shall be countersigned by the Prime Minister and the Ministers concerned in charge of their respective affairs.)

## CHAPTER V. THE COURTS

Art. 32 The Courts shall, in accordance with law, conduct trials of civil and criminal cases. In cases of administrative litigation and other special trials, however, special provision shall be made by law.

Art. 33 The organization of the courts and the qualifications of the judges shall be determined by law.

Art. 34 Judicial officials shall command independence in the discharge of their duties.

Art. 35 Judicial officials shall not be dismissed except by trial on criminal offence of disciplin-

ary punishment, and shall not be subjected to suspension, transfer of position or office, or reduction of salary, against their will.

Art. 36 Trials and judgments in court shall be open to the public. Cases involving elements inimical to public order and peace, or which are detrimental to public morals, however, may be closed to the public by law or by decision of the Courts concerned.

#### CHAPTER VI. THE SUPERVISORY COUNCIL

Art. 37 The Supervisory Council shall supervise and audit the accounts. The organization of the Supervisory Council and its functions shall be determined separately by law.

Art. 38 The Supervisory Council shall consist of Supervisors and Auditors.

Art. 39 There shall be no dismissal of Supervisors and Auditors, except for criminal offences or as a disciplinary penalty, and they shall not be subjected to suspension or transfer of office, or reduction of salary, against their will.

#### SUPPLEMENTARY PROVISION

Art. 40 This Law shall come into force on the Ninth day of March, the First Year of Tatung.

### The Law guaranteeing Civil Rights

The Chief Executive who, through the confidence placed in him by the entire people, exercises the administrative power over Manchukuo, the State of Manchuria, hereby pledges to give the people, except in times of war and of emergency circumstances, guarantee of liberty and rights and to determine the duties of the people in accordance with the provisions hereinafter set forth:

- Art. 1 The personal liberty of the subjects of Manchukuo, the State of Manchuria, shall not be infringed upon, and its restrictions by the public authorities shall be provided for by law.
- Art. 2 The property rights of the subjects of Manchukuo, shall not be infringed upon and their restrictions under necessity of public welfare shall be provided for by law.
- Art. 3 The subjects of Manchukuo shall be given equal protection by the State irrespective of race and religion.
- Art. 4 The subjects of Manchukuo shall, in accordance with the provisions of law, possess the right to participate in the affairs of the State or of the local organizations.
- Art. 5 The subjects of Manchukuo shall, in accordance with the provisions of law, possess the right to be appointed to governmental offices and it shall also be their duty to assume other honorary positions.

- Art. 6 The subjects of Manchukuo may present petitions in accordance with the prescribed procedure provided for by law.
- Art. 7 The subjects of Manchukuo shall enjoy the right to be tried by the judges of the courts provided for by law.
- Art. 8 In case the rights of the subjects of Manchukuo are violated by illegal dispositions of the administrative offices, a remedy may be sought for in accordance with the provisions of law.
- Art. 9 The subjects of Manchukuo shall not be subjected to any taxation or imposition or penalty under whatever name unless provided for by law.
- Art. 10 The subjects of Manchukuo may protect and promote their economic interests by means of joint organisations in so far as they are not prejudicial to public welfare.
- Art. 11 The subjects of Manchukuo shall be protected against usurious interests, profiteering and all other forms of unjust economic oppression.
- Art. 12 The subjects of Manchukuo shall possess the right to enjoy the privileges of various establishments and institutions founded by public funds of the State or of the local organisations.
- Art. 13 This Law shall come into force on the Ninth day of March, the First year of Tatung.

Ninth Day of March,

First Year of Tatung (1932).

The Manchukuo Government.



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# CORRIGENDA & ADDENDA

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- |                             |   |
|-----------------------------|---|
| 9 (l. 13 from the top)      | 2,989,874 <i>should read</i> 2,939,874  |
| 44                          | Stahlin <i>should read</i> Stalin   |
| 45 (l. 8 from the top)      | <i>the full stop should be struck out</i>   |
| 58 (l. 13 from the top)     | Mathew <i>should read</i> Mathews   |
| 81                          | Stahlin <i>should read</i> Stalin   |
| 96 (l. 11 from the top)     | Morern <i>should read</i> Modern  |
| 101 (l. 2 from the top)     | the Supreme Court of <i>should be omitted</i>   |
| 118 (l. 2 from the bottom)  | Treasure <i>should read</i> Treasures   |
| 121 (l. 9 from the bottom)  | <i>Add to the sentence beginning with "The Regency" the following words at the beginning</i> When the Emperor (above his age of majority) cannot personally govern owing to some obstructive cause. |
| 157 (l. 1 from the top)     | treature <i>should read</i> treasure  |
| 175 (l. 12 from the bottom) | Stahlin <i>should read</i> Stalins  |
| 265                         | <i>Add a sub-heading above the seventh line from the bottom thus:</i> (I Sovereignty of the People)   |
| 274 (l. 14 from the top)    | ture <i>should read</i> true  |
| 277 (l. 1 from the top)     | McChesney <i>should read</i> McChesey   |
| 318 (l. 15 from the top)    | the House <i>should read</i> a House  |



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